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# CONVEYANCING.

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FORMS AND PRECEDENTS  
IN  
CONVEYANCING,

WITH  
INTRODUCTION AND PRACTICAL NOTES.

BY  
WILLIAM WHITTAKER BARRY,  
OF LINCOLN'S INN, BARRISTER-AT-LAW,  
AUTHOR OF 'A TREATISE ON THE PRACTICE OF CONVEYANCING.'

LONDON:  
SIMPKIN, MARSHALL, AND CO.  
1872.



## PREFACE.

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THE AUTHOR was for several years a pupil in the chambers of the late William Hanbury Jones, the eminent conveyancer, and during that period, with the industry of the students of the olden time, he collected and wrote out many manuscript volumes of forms and precedents. Mr. Hanbury Jones was himself a favourite pupil of Richard Preston. The collection of forms bears such honoured names as Sugden, Duval, Preston and Hodgson, and some of them were compiled by Mr. Jones, and all, more or less, revised by him. It seems to have been the practice of Mr. Preston to prepare drafts more from forms than completed precedents, and Mr. Jones inherited and enforced among his pupils the same method. Hence the collection made by the compiler consisted principally of forms.

It has occurred to the writer often since his pupil days that a selection from the manuscript volumes of forms and precedents in his posses-

sion might be utilised for the benefit of the profession and himself by appearing in print. The success of the author's work on the 'Practice of Conveyancing' gave force to this idea, and with the purpose accordingly of such a publication the compiler obtained from Mr. Hanbury Jones his written consent to make such use of the collection of forms and precedents in the writer's possession in the way of publication as he might think proper.

With regard to the precedents, only a few of these, for the reason already mentioned, have been derived from the collection made by the author in his pupil days. The greater number of the precedents are compiled from drafts prepared by the writer in practice, and some of them have been drawn by him expressly for this work.

Though the present collection of forms and precedents does not assume to be what is termed 'concise,' yet they have been pruned of redundancies and carefully revised. The Author also should be careful to state that, though the forms have emanated from the above sources, yet he alone is responsible for the state in which they are actually presented to the profession.

The Introduction has been written with the intent to present to the mind of the student a general view of the history and mode of prepa-

ration of deeds, and of the duties which the conveyancing practitioner may be called on to perform. The Notes have been collected and written with the object of affording practical and necessary information on points connected with the forms and precedents. In the Appendix will be found a Table of Stamp Duties.

However, though the present work owes its origin mainly to the accidental circumstances already stated, yet the compiler has had in view a book which shall occupy a middle place between the more compendious and concise collections, adapted as regards size for the desk or the bag, and containing a set of forms and precedents suitable for the daily needs of practice, whether in the solicitor's office or the chambers of conveyancing counsel.





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## INTRODUCTION.

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It would appear from 'Turner's History of the Anglo-Saxons,'<sup>1</sup> that in the Saxon conveyances the grantor's name and title were stated, and then followed a recital on the brevity and uncertainty of life, or the utility of writing, or the charitable or friendly feelings which occasioned the grant. Then came conveying words, the person's name to whom the land was granted, the consideration, parcels, general words—nearly as numerous as in our present deeds—the nature of the tenure and services, and, finally, exhortations not to disturb the donation, and imprecations on those who should attempt such disturbance : then date and witnesses. The grants are generally in Latin, and the boundaries in Saxon, as being more likely to be understood in case of dispute. The Saxon deeds had no wax seals ; these were introduced at the Norman Conquest. About the reign of Henry III. conveyances assumed the shape and the division into several formal parts still generally in use.<sup>2</sup>

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Saxon conveyances.

<sup>1</sup> Vol. ii. 568.    <sup>2</sup> Spelman's English Works, On Tenures, 236.

**INTRO-  
DUCTION**

The early  
convey-  
ancers.

The first regular conveyancers were Roman Catholics. Debarred by the Statute of 7 and 8 William III. from the practice of advocacy, they devoted themselves to conveyancing, and hence a great improvement arose in the forms of assurances.<sup>1</sup> Nathaniel Pigot, who had been called to the Bar previously to the disabling Act of William III., was the first who came into public notice. He was succeeded by James Booth, the patriarch of the modern school of conveyancing.<sup>2</sup> Ralph Bradley was a contemporary of Booth's; he practised for about half a century at Stockton-on-Tees with success, and acquired not only a provincial but a general reputation.<sup>3</sup> They were followed by Charles Butler, a Roman Catholic, Lewis Duval, a pupil of Butler's, and Richard Preston, Hayes and Jarman. These have been succeeded by a school of conveyancers now living, and no unworthy followers of their predecessors, but whose names it would of course be invidious to mention. Great weight is from time to time given to the practice of conveyancers, which, according to Lord Eldon,<sup>4</sup> has settled the law on many disputed points arising in that branch of our jurisprudence.

Collections  
of prece-  
dents.

As might have been expected, from a very

<sup>1</sup> 1 Dav. Conv. Intro., 6.

<sup>2</sup> 2 Butler's Rem. 274.

<sup>3</sup> 1 Dav. Conv. Intro., 7.

<sup>4</sup> 1 Turn. and Russ 86, 7.

early period, various collections of precedents have been published, but the first of any modern importance was 'Wood's Conveyancing,' which appeared in 1749, and the fifth edition in 1790 by Mr. Powell. In 1803, followed another well-known collection of precedents by Mr. Barton, the third edition of which was published in 1821 and 1824, and a supplement by Wilde in 1826. These for many years formed the collection of precedents in common use until Bythewood and Jarman's work made its appearance. This compilation was projected by Mr. Bythewood, who, dying when a very small portion only of it was done, it was completed by Mr. Jarman. The next work was one commenced by Mr. Martin in 1836, and completed by Mr. Davidson, and now bears the name of the latter exclusively.<sup>1</sup> These collections have been followed by many works of various sizes and degrees of merit, and differing in their nature, design, and character, and all of which have, in some measure or other, lightened the daily duties and rendered less difficult the arduous work of the draftsman.

A common purchase deed of a piece of freehold land cannot be explained without going

INTRO-  
DUCTION

The differ-  
ent modes  
of assur-  
ance.

<sup>1</sup> 1 Dav. Conv. Intro., 9 et seq.

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back to the reign of Henry VIII., nor an ordinary settlement of land without recourse to the laws of Edward I.<sup>1</sup> At the common law feoffments and grants were the generic assurances, the former being used where the freehold of which actual seizure could be given, passed, and the latter being the appropriate mode of conveying a remainder or reversion. These assurances were at all times easily perfected: their operation was unobjectionable, and their nature intelligible.<sup>2</sup> The Statute of Uses<sup>3</sup> gave rise to several other kinds of assurance, namely, the well-known and popular form of conveyance called 'Lease and Release': a bargain and sale, a covenant to stand seized, and an appointment. The usual (or, it may be said, the general,) mode of conveyance at the present day, is that of the Statutory Grant. Still, as it has been well remarked, in the Investigation of Titles, the old forms of assurance must be borne in mind, and it should be seen that their requisites were complied with, for deeds, like persons, must be judged of by the time in which they lived and had their being.<sup>4</sup> With regard to copyholds, they still pass by actual surrender on the Court Rolls, except where there exists an equitable interest, which is passed by a deed

<sup>1</sup> Williams, R.P. 16.

<sup>2</sup> 27 Hen. 8. c. 10.

<sup>3</sup> Cornish on Purchase Deeds, 1.

<sup>4</sup> Cornish on Purchase Deeds, 17.

termed 'A Bargain and Sale at Common Law,' but not requiring enrolment. The feoffment has become quite obsolete, except in the rare case of a conveyance by an infant under the Custom of Gavelkind.<sup>1</sup> In the Australian Colonies freehold lands are conveyed by feoffment or grant.<sup>2</sup>

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The length of the various assurances has changed from time to time, and various clauses, covenants, and provisions have been added to these, though their nature and operation remain the same. It would seem that an accidental circumstance led to an abridgment of the forms of assurance. In consequence of the pressure of the old Stamp Duties, it became customary with solicitors to request of counsel conciseness in the preparation of conveyances,<sup>3</sup> and hence this impost on the part of the Legislature had indirectly a very important operation. It is well remarked by an able writer that skill and ability are unnoticed in the taxation of costs, and that he who can put the greatest number of words in a document, even although they consist of mere rubbish, fares better than he who, by superior skill, prepares a concise conveyance, such as a purchaser may read and understand. And, according to the same learned author, it

The length  
of assur-  
ances.

<sup>1</sup> 2 Dav. Conv. 171.    <sup>2</sup> 1 Dart. 484.    <sup>3</sup> 1 Bart. Pr. 160, n.

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is owing to a like cause that the best of our precedents are still incumbered with a mass of verbiage derogatory to the science of conveyancing.<sup>1</sup>

Component  
parts of a  
deed.

In every assurance there must be a grantor and grantee, as well as subject matter of alienation. The former are denominated *parties*, the latter *parcels*. The motive or inducement for the grant is termed the *consideration*; the expressions evincing an intention to convey are called the *operative words*. The explanatory statements are termed *recitals*; the *habendum* declares the interest taken; the obligations entered into are called *covenants*, and *conditions*; and, finally, a deed must be *executed*—that is, sealed and delivered.<sup>2</sup>

Import-  
ance of  
clearness  
and pre-  
cision in  
legal in-  
struments.

Legal instruments in which perspicuity or clearness is the only object have always been, and must continue to be, remarkably more tedious and prolix than any other writings in which the same clearness and precision are not equally important; for abbreviation opens a door for doubt, and, by the use of them, what we gain in time or length we lose in precision and certainty. In common discourse we save time by using the short substitutes HE, and SHE, and THEY, and IT, and, with a little

<sup>1</sup> Greenwood, Man. of Conv. Pref., ed. 3.    <sup>2</sup> Martin, Rec. B. 3, 4.

care on one side and attention on the other, <sup>INTRO-  
DUCTION</sup> they answer our purpose very well; or, if a mistake happens, it is easily set right. But this substitution must not be risked in a legal instrument, and the drawer therefore thinks himself compelled, for the sake of certainty, to say, HE (the said John A.), to HIM (the said Thomas B.), for THEM (the said William C. and Anne D.), as often as these persons are named. And, for a similar reason, he is compelled to employ many other prolixities of the same kind.<sup>1</sup> However, though abbreviations and substitutes undoubtedly cannot safely be trusted in legal instruments, it is perhaps an unnecessary prolixity to retain in these writings the substitute at the same time with the principal, for which alone the substitute is ever inserted, and for which it is merely a proxy. HE, SHE, THEY, IT, WHO, and WHICH, should therefore strictly have no place in these instruments, but be altogether banished from them.<sup>2</sup> Still, however, the use of the pronoun HE or SHE, before and in addition to the name, "the said A. B.," makes the reference more emphatic, and sometimes also more intelligible.

The style of deeds should be clear. Every- <sup>The style  
of deeds.</sup> thing should yield to perspicuity. There should

<sup>1</sup> 1 Diversions of Purley, 232.

<sup>2</sup> Id. 282. n.

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be no punctuation : the sense should be intelligible without the aid of stops.<sup>1</sup> Still, though in the preparation of deeds literary composition should be subordinate to other considerations, yet, where its rules are adhered to as much as possible, there, also, we believe, will legal perspicuity be best attained.

The use of precedents,

It is well remarked by an old conveyancer that drafts framed to meet peculiar circumstances are seldom worth preserving, and that the most useful precedents are those which supply the common and ordinary demands of practice.<sup>2</sup> The collections of precedents, indeed, are guides which no one who wishes to avoid being entangled in the cross-roads and bye-paths of practice will hastily dismiss. And not the least of the advantages resulting from such words is that they have given a sort of fixedness to the forms of conveyancing, and thereby produced a uniformity of practice that cannot be too highly prized.<sup>3</sup>

Acquaintance with principles necessary.

However, it is important to remind the student that, notwithstanding the numerous collections of precedents before the profession, it is still true as ever that—as remarked by an old writer<sup>4</sup>—‘without a thorough acquaintance

<sup>1</sup> Martin, Rec. B. 32, 34.

<sup>2</sup> Coventry, Mort. Pr., Preface.

<sup>3</sup> Martin, Conv. Rec. Book, Pref. 5, 6.

<sup>4</sup> 1 Wood's Conv., Address to the Reader by Powell.



with the principles upon which they are founded, no experience in practice, however extensive, will render a man a safe and secure conveyancer'; for, as well observed in another quarter, 'where practical skill is wanting, however familiar the student may be with forms or the rules of practice, they will be to him but as the instruments of an art unknown, and unless practical knowledge is united with sound principles, the mind (to borrow a beautiful image) will be too like a child's garden where the flowers are planted without their roots.'<sup>1</sup>

The new Bankruptcy Act<sup>2</sup> which came into operation on the 1st of January, 1870, has brought about a great change in the law relating to composition deeds. It is probable that under the new Act compositions will in future be effected by a simple statement and proposal on the part of the debtor, specifying the terms of the proposed composition, which will be accepted and made binding by a resolution passed at two successive meetings by the prescribed majority of creditors, and that formal deeds of compromise will be used in exceptional cases only.<sup>3</sup>

In order that the practitioner may prepare a draft with accuracy and clearness, it is most

<sup>1</sup> Martin, Rec. B., Preface, 7, 8.

<sup>2</sup> 32 & 33 Vict. c. 71.

<sup>3</sup> Preface to Prideaux's Precedents, ed. 6.

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Change in  
composition  
deeds.

Draftsman  
should  
master  
facts and  
have some  
plandrawn  
out.

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necessary that he should in the first place fully master and understand the facts of the case and the intentions of the parties, and have some plan drawn out either on paper or in the mind as to the scope and bearings of the draft to be prepared. Otherwise great obscurity is likely to prevail, and the best and most elaborate precedents will only serve to confuse or mislead if they do not conduce to some positive error, leading sooner or later to litigation.

Reason  
why deeds  
without  
punctua-  
tion.

The reason why legal instruments are without any punctuation probably arose from the great danger there would be in trusting to such an accident as a comma or semicolon in determining any question as to a person's rights under a document. A parenthesis is sometimes used, though this should be disregarded on any question of construction. It may be observed that, in accordance with the usage of preceding collections, the forms and precedents in this work are punctuated as in books generally; but in copying them out in practice, no attention should be paid to the stops.

Deeds-  
Poll.

Deeds-poll are now rarely used. They are sometimes resorted to where parties execute a release, or by trustees when they disclaim the trusts of a deed or will. When a deed-poll contains recitals, it should commence as follows:—‘To all to whom these presents shall

come, A. B. of &c. sends greeting.' The operative part afterwards begins as follows:—'Now these presents witness that,' &c. But when a deed-poll contains no recitals it should begin as follows:—'Know all men by these presents that I, A. B. of,' &c.<sup>1</sup>

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In Indentures the date is always placed at the beginning, as follows:—'This Indenture, made the      day of      in the year of our Lord 18—.' And the 'In witness' clause at the end of the deed contains a reference to it in these words:—'The day and year first above written.' In a deed-poll the date is placed at the end in the 'In witness' clause, and in wills the date is also at the end. In agreements the date is generally placed at the beginning, as in an indenture, but occasionally at the end.<sup>2</sup>

The date  
in legal  
instru-  
ments.

It is usual to make every person party to an indenture who either grants or takes any estate or interest thereunder. Though now a person not a party to a deed may take an estate or obtain the benefit of a covenant therein.<sup>3</sup> As regards the order of the parties, this will readily be determined by experience. Generally, those having legal estates should appear before equitable owners, and parties conveying of course should always be named before those taking

Order of  
parties and  
their des-  
cription.

<sup>1</sup> 1 Dav. Conv. 33, 34.

<sup>2</sup> 1 Dav. Conv. 36.

<sup>3</sup> 8 & 9 Vict. c. 106, s. 5.

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estates. Such as have estates of freehold are usually placed before those who have terms of years,<sup>1</sup> and where a person conveys at the request or by the direction of another, the person so conveying should be placed first.<sup>2</sup> Joint-tenants, tenants in common, co-partners, trustees, executors, residuary legatees or devisees, and others of a like kind, having similar estates or interests, or appearing in the same character, should be classed together as of the same part. Sometimes persons who convey or appear in different ways in a deed are named two or three times. This course we think inconvenient and unnecessary. Again, the plan—now, however, much fallen into disuse—of describing parties as heir or devisee or executor of some person deceased, and so on, is very objectionable, and likely to encumber the attention prematurely. It is much better to allow these facts to appear in their order of date in the recitals. The parties should be described simply by name and address and profession, or occupation, in the case of son or daughter, or of the address of the father and partners together, or of their place of business. Peers should be described by their titles only, and eldest sons having a courtesy title, by that, adding, ‘commonly called or known by the

<sup>1</sup> Hayes, Conc. Conv. 206, n.<sup>2</sup> 2 Rouse, Prec. Conv. 119.

name of ———,' and afterwards using 'the INTRO-  
DUCTION  
courtesy title only. A wife is described together with her husband, unless where she appears in respect of her separate estate, when she is described as the wife of her husband, stating his address. However, though accuracy in the description of parties is very desirable, yet any error is not material, provided the identity of the party can be established in a satisfactory manner.

Some conveyancers, it is stated,<sup>1</sup> in drawing deeds adopt the system of numbered paragraphs, like Acts of Parliament and equity pleadings, but such plan has not much advantage to re-commend it for adoption. Deeds with  
numbered  
para-  
graphs.

When the solicitor has prepared the draft of a deed, he should forward a fair copy of it to the solicitor on the other side for his perusal, and if the latter approves of the same, the draft may then be re-engrossed. If any alterations or additions be made, it will then be for the solicitor who has prepared the draft to see how far they are material to his client's interests; but whether so or not, no alteration should be afterwards made, however trivial, without acquainting the other party therewith previously to the engrossment of the deed.<sup>2</sup> Draft  
should be  
forwarded  
to either  
side for  
perusal.

<sup>1</sup> Prid. Pr. Pref. 1 vol. 192, n., 2 Id. 207, n.

<sup>2</sup> 2 Hughes, Pr. of S. 241.

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Solicitor on  
receiving  
bill bound  
to deliver  
up deeds  
and copies.

A solicitor upon receiving the amount of his bill, is bound to deliver up to his client not only deeds and original documents belonging to him, but also the drafts and copies which the client has paid for. Though it may be convenient in some cases to leave drafts and copies of deeds or other documents in the hands of a solicitor, yet the client is the proper person to judge of that. He who pays for the drafts or copies has by law a right to the possession of them.<sup>1</sup>

How a  
deed  
begins.

A deed begins 'This indenture.' Such commencement of a deed containing recitals is ungrammatical, as it is evidently the dependent member of an unfinished sentence. When an indenture received its original form in an early and simple state of society, recitals were not in use, and the nominative case to the verb 'Witnesseth' was the initial substantive of the deed, namely, 'This indenture.' It has, however, happened that the form has been retained in those cases where there are recitals, and consequently there is a repetition of the expression 'This indenture' in the testatum clause which creates another nominative to the verb. But this incorrectness, though admitted by all, has been rectified by none.<sup>2</sup> Such result has arisen

<sup>1</sup> Ex parte Horsfall, 7 Barn. and Cress. 528.

<sup>2</sup> Cornish on Purchase Deeds, 25, 26.

from the adherence to custom and the love of antiquity. INTRO-  
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On framing a draft, the conveyancer should bear in mind that the instrument must be fitted not only to effect the present purpose of the parties, but to form hereafter a constituent part of the evidence of ownership. The continuity of the statements should be so maintained that in reading the abstract we may proceed throughout without meeting with any break in the chain of evidence. It is therefore proper, generally speaking, to put upon the deed all such facts and circumstances affecting the title as have happened since the execution of the last instrument.<sup>1</sup> Accordingly, recitals have long formed a material part of every assurance. In reciting, there are two different things to which attention should be directed. First, the making recitals sufficiently explanatory of the present transaction taken by itself, so that any one who reads the draft without any other papers may be able to collect all the facts which are necessary to the complete understanding of the transaction. Secondly, the consideration that the draftsman is preparing one of a series of instruments which are to constitute the future abstract of title, and therefore it is

General  
nature and  
object of  
recitals.

<sup>1</sup> Martin, Rec. B. 43.

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necessary to put upon record, by way of recital, all intermediate facts and circumstances since the last deed which are necessary to the derivation of title, so that in proceeding from deed to deed on the abstract, one may, with the aid of the recitals, have a complete chronological history of the title.<sup>1</sup>

Statements  
in the  
nature of  
recitals.

Recitals is the term by which conveyancers designate not only those portions of drafts which are, properly speaking, recitals, namely, which recite or rehearse former instruments, but also those portions of them which state or allege the facts which are material to the transaction, and which equity draftsmen would more accurately call statements, or stating parts.<sup>2</sup> Recitals, as we have already incidentally observed, are not of modern invention; they are found in our most ancient charters. Brief as were the land-bocs of the Anglo-Saxons—in some instances, indeed, hardly larger than the palm of a man's hand—yet they usually contained recitals.<sup>3</sup>

Framing of  
recitals.

In framing recitals the general rule to be observed is to express everything that may elucidate the title, or assist in the future investigation of it, and carefully to avoid all reference to any fact which may show a defect

<sup>1</sup> Lecture on Recitals by Prof. Park, Martin, Rec. B. App. 458.

<sup>2</sup> Id. 457.

<sup>3</sup> Martin, Rec. B. 28.



in the title, or raise a difficulty concerning it on any future occasion.<sup>1</sup> Only those documents or facts appearing upon the prior title should be recited as may be requisite to advance or illustrate the operation of the principal deed. The operation rather than details of a deed should be recited, but the language of informal wills should be treated with tenderness. Facts should be stated without in general deducing from them legal consequences.<sup>2</sup>

Generally speaking, it is the most advisable course to recite deeds, wills, and documents in the order of date; but where there are distinct interests, and each is the subject of a separate class of deeds, there it is better to recite the whole of one class, or relating to some particular transaction, before another is entered upon.<sup>3</sup>

It is always better to recite deeds and facts as substantive recitals when they can be depended on, rather than as recitals in another deed, or recitals within recitals, as they are termed.<sup>4</sup> A want of adherence to this rule frequently leads to great obscurity in the perusal of a deed.

The length of recitals has been attributed by a learned author to the control exercised by Courts of Equity in matters relating to real

<sup>1</sup> 2 Preston's Conv., 77.

<sup>2</sup> Hayes Conc. Conv. 213, n.

<sup>3</sup> Martin, Rec. B. 50, Prof. Park, Id. 466.

<sup>4</sup> 1 Stewart's Conv. 24, n.

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property, so that it has been considered in the highest degree expedient to preserve and embody with the muniments of title evidence of the fairness of the transaction.<sup>1</sup> Recitals bind parties by estoppel.<sup>2</sup> According to the old principle this was not so, and therefore the party was made to state, 'as he the said ——— doth hereby admit and acknowledge' by way of admission. Still, though no longer absolutely necessary, such an acknowledgment makes a statement more clear and emphatic, and therefore it is as well that it should be retained.

Effect of  
recitals in  
controlling  
the opera-  
tive part.

As deeds in their operative parts are frequently restricted by the recitals; great care is necessary in framing those which are intended to indicate the intentions of the parties. It is usual, in order to prevent the danger of a recital controlling the operative part, to state that the parties intend to convey, or release, or concur, as the case may be, 'as hereinafter contained, or expressed, or appearing.' Sometimes it is desirable to recite an informal document, or an obscurely-worded clause in a will, *verbatim*, and not for the draftsman to take upon himself the responsibility of conveying its meaning or purport.

<sup>1</sup> Cornish on Purchase Deeds, by Horsey, Preface, 12, n.

<sup>2</sup> Lanison v. Tremere, 1 A. and E. 792; Bowman v. Taylor, 2 A. and E. 278.

In derivative assurances—such as the transfer of a mortgage, assignment of a lease, or the like—the original assurance should be fully recited, and the parcels given, the conveyance being afterwards by reference, and not by independent description. In appointments, the powers under which they are made should be recited at length. On sales by auction, the mode of sale should not be referred to, as by so doing you bring the particulars and conditions on the title. In the case of endorsed deeds, the principal instrument should not be recited, nor any statements it contains. A party is referred to in the first instance as ‘the within named A. B.,’ and afterwards as ‘the said A. B.,’ and where a second deed is endorsed it should be when necessary ‘the above-named A. B.’

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Recitals in  
derivative  
assurances.

In recent times recitals have undergone considerable abridgment. Some draftsmen, indeed, altogether omit them in the case of a conveyance by an owner in fee simple—a practice not to be recommended, as a mere statement of seisin may, after lapse of time, acquire some value as an affirmation of title at the period when made. In many cases, also, as when the operative part speaks for itself, such as, for instance, a release of right to dower or covenant to produce deeds, the introductory recital is often omitted. In leases recitals are not usual.

Where re-  
citals are  
omitted.

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Wills do not generally contain recitals, though where made in pursuance of a power it would be desirable to refer to the same, though not absolutely necessary. Sometimes, also, the intention of the testator may be better explained or made clear by a preliminary recital.

The con-  
sideration  
in a deed.

The consideration for a deed is generally fully stated in the first testatum, and afterwards referred to as 'for the considerations aforesaid.' Formerly, in every conveyance where there was no consideration, pecuniary or marital, for the grantor to convey, there was inserted what was termed a nominal consideration, that is, the small sum of 5s. or 10s. was expressed to be, though never, in fact, paid to the grantor, and its receipt formally acknowledged. The primary object of this consideration was to make the deed have effect, as a bargain and sale, should it fail of operation as a release. But it has been justly remarked<sup>1</sup> that an assurance which was not enrolled could not operate as a bargain and sale, and that even if the conveyance so took effect it would often defeat the intention of the parties by converting the uses into trusts. The practical utility of the nominal consideration was confined to a bargain and sale enrolled, and the creation of a term by the owner of a free-

<sup>1</sup> Davidson's Conc. Pr., Intro., 3.

hold estate, which did not require enrolment.<sup>1</sup> INTRO-  
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 From this circumstance the practice of inserting a nominal consideration extended itself to every form of assurance of property, whether freehold, copyhold, or leasehold, or even pure personalty, without the slightest regard to utility. The practice, however, of having a nominal consideration has now been generally discontinued, if not become altogether obsolete.

It is important that there should be a receipt clause of some kind or other in the body of the deed, as well as endorsed upon it. The form now usually adopted has been much simplified, though it is still desirable that there should be an express release from the purchase-money. Receipt  
clause.

Formerly the words of assurance were first used in the past tense, as 'hath granted, enfeoffed, bargained, sold, and released,' and then the words in the present tense. This form arose from the circumstance that in old times a feoffment did not require a deed or even writing to evidence it. When, therefore, a deed was executed, it necessarily led to the reference to a past transaction, and by way of confirmation added words in the present tense. Such form of language thus became introduced into con- Words of  
assurance.

<sup>1</sup> Davidson's Conc. Pr., Intro., 3.

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veyances of land generally, though it has now been discontinued. Until late years it was the practice of draftsmen to insert in deeds a great many operative words, such as, in a lease, 'grant, bargain, sell, demise, and to farm let;' in a conveyance, 'grant, bargain, sell, enfeoff, convey, and confirm;' in an appointment, 'direct, limit, appoint, ratify, and confirm.' But recently the absurdity of this practice, for which several specious reasons were given, such as the convenience of a deed operating in various ways, the danger of an omission of some of the words in copying, and the like, has been shown in various works, and the operative words have been much simplified. In a lease it is now considered sufficient to use the words 'grant, demise, and lease;' in a conveyance, 'grant and convey;' and in an appointment, 'direct and appoint.' Some draftsmen, indeed, at the present day use only the principal word of the assurance, such as 'demise,' 'grant,' or 'appoint,' but perhaps this course is going from the extreme of verbosity to that of brevity. The word 'release,' since the abolition of the assurance by lease and release, has become inappropriate, and the word 'grant' substituted. For chattels real and personal, the word 'assign' seems proper; in an appointment the words of the power should be followed, and

for a married woman, 'dispose of,' according to the Fines and Recoveries Abolition Act,<sup>1</sup> INTRO-  
DUCTION coupled with the word grant.<sup>2</sup> Some practitioners now omit the formerly usual insertion in a deed of the formalities of the power, but we think the practice convenient, as it directs attention to the proper execution of the instrument. The attestation of an appointment should, however, express all the ceremonies required by the power to attend its execution.<sup>3</sup>

A great deal of abstruse, but now obsolete learning has been devoted to the meaning and operation of the word 'grant.' A learned writer suggests that etymologically the words 'grant' and 'warrant'—in the Norman, '*guarrant*'—appear to be identical, being both derived from '*guerre*,' and signifying an undertaking to defend or *war for* the title of the donee.<sup>4</sup> However, though derived from this, its legal import, the popular and general meaning of the word 'grant' is of modern introduction, and only means the most simple, and at the same time comprehensive, term of conveyance.

The parcels are usually described in the body of the deed in detail by names of closes, numbers of houses, dimensions, boundaries, abutments, and The  
parcels.

<sup>1</sup> 3 & 4 Will. 4. c. 74, s. 77.    <sup>2</sup> Dav. Conc. Pr., Intro., 4, 5.

<sup>3</sup> Hayes Conc. Conv., 218, n.

<sup>4</sup> 4 Byth. and Jarm., Conv., 116, note by Sweet.

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occupations or tenancies. The parcels should generally be the same as those in the old deeds. Sometimes, however, where great changes have taken place in the property, this is inappropriate. In such case a new description is inserted; but care should be taken that such description is adequate in extent to the old one, otherwise there may be doubts whether it includes the same. After the new description it is sometimes desirable to insert also the old parcels, as follows :—‘ And all which premises were formerly better known or described as All—’ &c. Strictly speaking, and by way of safety, some words should be added so as to include the conveyance of the old parcels also, or there may be the addition of all the property in a particular parish, or even county; but care in this case should always be taken, while, on the one hand, not to convey too little, yet, on the other, not to comprise too much. The old deeds rarely contained descriptions of parcels in schedules, but this practice has sprung up recently, and has been found very convenient. It is particularly so where there are several sets of parcels. These are more neatly contained in schedules, and referred to as such by number, than by the reference firstly, secondly, or thirdly described before or after in the deed. The references, so common in the



descriptions of the parcels to purchases, devises, or descents, for the purpose of showing by what means the property was acquired, are not unfrequently injurious to the title.<sup>1</sup> The parcels are frequently rendered more clear by means of a delineation of a particular colour or several colours (as the case may be) on a map, either at the back or in the margin of the deed, and containing the abuttals and dimensions. In the case of land sold for building purposes, a map or plan is essential for the purpose of showing the site of the different plots. At the end of the parcels comes any exception or reservation which there may be out of the grant. A parenthesis is generally used, the clause commencing, 'except, and always reserved,' &c. INTRO-  
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The reversion clause is now fallen into disuse. Immediately after the parcels follows the estate clause, as it is termed. Where there has been an exception or a reservation it is advisable before the estate clause to insert the words, 'And (by way of conveyance, and not of exception) all the estate,' &c. Estate  
clause.

After the premises comes the habendum, the office of which is to limit or define the nature of the estate taken. The usual form of words in the case of real estate is, 'To Have and To Haben-  
dum.

<sup>1</sup> Hayes Conc. Conv. 224, n.

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Hold,' and in the case of personalty, 'To Have, Hold, receive, and take.' The reference to the parcels in all deeds must depend upon the subject matter to be conveyed or charged : thus, if it be a messuage and lands, the reference throughout the deed will be by the words, 'messuage or tenement, lands and hereditaments'; if lands only, 'pieces or parcels of land and hereditaments'; if a manor and messuage, 'manor, messuages, or tenements and hereditaments'; if a moiety of property, 'moiety or half part or share hereby granted or intended so to be, of and in the said messuages, &c., according to the circumstances, the rule being that in the reference to the parcels the portion of greatest importance should be referred to first, and the whole close with the generic word, 'hereditaments,' so as to include anything omitted.<sup>1</sup> The reference to the parcels, whatever it may be, should wind up with the word 'premises.'

Words of  
conveyance  
in habendum.

Formerly the words of conveyance varied with the mode of assurance adopted : for instance, in a bargain and sale, 'hereby bargained and sold or intended so to be'; in a release founded on a lease for a year, 'hereby released or intended so to be'; in an appointment and

<sup>1</sup> 1 Stewart's Conv., Intro., 9.

release, 'hereby appointed and released or intended so to be.' But now, since all lands are made to lie in grant as well as livery, the common form is, 'hereby granted or intended so to be.' A more convenient expression, however, perhaps, is, 'hereby Assured or intended so to be.' According to established usage in the limitation of estates the word 'assigns' is used in the habendum, and it has been thought better to retain such word in this the latest work of precedents. The learned and able editor of an established collection, however, says, 'it is entirely useless,' and it has accordingly been omitted therefrom. He admits, nevertheless, that such is not the case in a covenant—at all events where it is contained in an Indenture executed after the 1st of October, 1845.<sup>1</sup> In the habendum should be stated any mortgages, charges, or leases subject to or discharged from which the property is conveyed or assigned.

Last in a deed come the covenants for title. Those usually entered into by an absolute owner in fee are that he has good right to convey, for quiet enjoyment, freedom from incumbrances and further assurance. Formerly there was also a covenant for seisin preceding that of good right

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Covenants  
for title.

<sup>1</sup> Hayes Conc. Conv., 207, note by Coltman.

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to convey, but it has now fallen into disuse as being included in the latter.<sup>1</sup> Trustees, or mortgagees, or executors, conveying or assigning, only covenant that they have not encumbered the property. Sometimes also a covenant for production of deeds is added: that is, in those cases where the deeds are retained by the vendor, and there is not a separate deed of covenant for their production.

**Testatum  
clause.**

The testatum clause is never written in full in the drafts of deeds, but is indicated by the words, 'In Witness,' &c. With regard to the execution of powers, though the restriction that deeds shall be 'sealed and delivered in the presence of, and attested by, two or more credible witnesses' has been referred to as troublesome and useless, and an unmeaning form,<sup>2</sup> yet it has the merit of obliging the appointor to the necessity of some supervision in the exercise of the power. Sometimes it is added that the witnesses shall not be menial servants. By a recent statute,<sup>3</sup> a deed executed in the presence of, and attested by, two or more witnesses, in the manner in which deeds are ordinarily executed and attested, is made valid as an execution of a power of appointment by deed or any instrument in writing not testamentary, notwithstanding

<sup>1</sup> King v. Jones, 5 Taunt. 418; Sugd. V. and P. 601, ed. 14.

<sup>2</sup> Dav. Conc. Pr., Intro., 8.

<sup>3</sup> 22 & 23 Vict. c. 35, s. 12.

ing some additional or other form of execution, or attestation, or solemnity, shall have been expressly required by the deed or instrument creating the power. In practice, however, the formalities, if known, are usually adhered to.<sup>1</sup> INTRO-  
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After the testatum clause come the schedules, Schedules. if any. These should be prepared or examined by the draftsman, who should sign his name at the end of them in testimony that the whole draft, including the schedules, has come under his observation.

The draft of a deed is endorsed with the date at the top in blank, as follows :—‘ Dated 1872 ;’ then lower down the parties are stated in this manner :—‘ John Brown, Esq., to Edmund Robinson.’ After that a short description of the nature of the assurance follows, as ‘ Draft Conveyance of lands at Blackmore, in the County of Northampton.’ Then the name and address of the solicitor, or firm of solicitors, is appended to the bottom of the draft. Endorse-  
ment of  
draft.

A deed is executed as follows :—The party first signs his name, and then placing the second finger of the right hand on the seal, says, ‘ I deliver this as my act and deed.’ Execution  
of deed.

Mortgages in fee were originally the only species of mortgage securities, but it being Mortgages  
in fee and  
by demise.

<sup>1</sup> Dav. Conc. Pr. 67, n.

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holden that on the mortgagor failing to pay the money on the day mentioned in the condition for redemption, the land became absolutely forfeited, and vested in the mortgagee, and was consequently subject to dower and all other charges affecting the mortgagee's estate, mortgages by demise were afterwards had recourse to. This doctrine, however, in process of time having been exploded by our courts of equity, mortgages in fee again became prevalent,<sup>1</sup> and they are now universally adopted, as they give the mortgagee the inheritance, on foreclosure, and the absolute dominion over the land by means of the power of sale. In the case of the old mortgage by demise, the property was granted by the mortgagor to the mortgagee for a long term of years, subject to redemption merely, but without any power of sale. The only mode, therefore, of obtaining payment of the principal money in case of default was a bill for foreclosure. The inconveniences attendant on this form of security soon became apparent, and hence arose the practice of having mortgages in fee with powers of sale.<sup>2</sup> However, in marriage settlements and trust deeds, long terms of years are still frequently created for raising portions or charges, and found very convenient for such purposes.<sup>3</sup>

<sup>1</sup> 5 Bart. Pr. 133, n.

<sup>2</sup> 5 Byth. and Jarm., 502.

<sup>3</sup> 2 Crabb. Conv. 752.

A mortgage is made by the same form of assurance as a conveyance, and contains somewhat similar recitals. Where a second mortgage is effected, then, some draftsmen simply refer to the first mortgage in the habendum without reciting it.<sup>1</sup> We think, however, the better plan to be in such case to recite the first mortgage, as the attention of the reader is thereby at once directed to the nature of the security. Where, however, several mortgages have been previously created, then they may very properly be referred to, as contained in a schedule giving the particulars of the securities.

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How  
mortgages  
are made.

Where the equity of redemption of property is sold to the mortgagee, there the assignment or conveyance may very conveniently be endorsed on the Indenture of Mortgage. The *ad valorem* duty should be paid on the aggregate amount of the principal money and interest, and money paid for the purchase of the equity of redemption.

Sale of  
equity of  
redemption.

The attention of the draftsman will frequently be directed to the preparation of marriage settlements. The history of a settlement of real estate presents many changes. At first simple, and intended to provide against few contingencies, it has become gradually to assume to the uninitiated the form and semblance of a

<sup>1</sup> 2 Dav. Conv. 557.

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very complicated instrument. But still to the scientific eye of the experienced draftsman, a marriage settlement of real estate at the present day has a certain coherence and order of arrangement, though comprising to the ignorant or uninformed an unnecessary number of clauses, powers, and provisions, and to the casual reader there may even appear to be some repetitions for the mere sake of verbosity. It has been justly remarked that great care and circumspection are necessary in preparing deeds of marriage settlement, as the events they are to provide for are not like those in purchase or mortgage deeds, or deeds of co-partnership, which can be previously ascertained, but which may or may not happen, and for the benefit of persons unborn, and the number and sex of whom are wholly unknown.<sup>1</sup> As marriage settlements have principally in view a provision for the wife and children of the marriage, the compliment is generally paid to the lady, to have the settlement prepared by her own counsel. This is more especially the case where the property to be settled proceeds from herself or her relatives.<sup>2</sup>

Settle-  
ments of  
personal  
estate.

The most common settlements are those relating to personal estate or land directed to be sold and converted into money, and treated the

<sup>1</sup> 7 Bart. Pr. 241.

<sup>2</sup> Id. 242.



same as personalty. The trusts of these settlements will vary somewhat in their nature and operation according to the source of the property settled, that is, whether it comes from the intended husband, or wife, or his or her family. But such settlements usually have in view trusts for the benefit of the wife for life, for her separate use, and either with or without power of anticipation, according to the wishes of the parties; then for the intended husband for life; then for the children of the marriage, as the husband and wife jointly, by any deed, or as the survivor by deed or will, shall appoint. The ultimate destination of the settled property, in the event of there being no children, will be regulated a great deal by the quarter from whence it has been derived. In the case of property coming from the intended wife or her family, it will often be held upon such trusts as the wife, by deed or will, notwithstanding coverture, may appoint, and in default, to her next of kin; and in the case of property coming from the intended husband or his family, upon trust for him, his executors or administrators, thus giving a reversionary interest, immediately disposable by deed or will, subject to the life interests of himself and wife, and the contingency of children. The usual provisions in a settlement of personal estate are

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powers for maintenance and advancement ; that receipts of the trustees shall be good discharges ; and to appoint new trustees, and for their indemnity. Sometimes there is a power for the trustees to invest in the purchase of land. The covenants are those for the assignment of choses en action where any personal property is assigned, or often only a covenant for further assurance. Where stock or shares are settled, which pass by transfer or delivery, there, of course, no covenants are necessary.

Settlement  
of real  
estate.

A settlement of real estate in strict entail does not often occur in practice, as only families in the upper classes of society, such as the nobility and landed gentry, resort to this mode of tying up their property. Where such a settlement is made, the estate is conveyed to trustees, or rather, releasees, to the use of trustees for ninety-nine years, upon trusts for securing an annual sum for pin-money, and, subject thereto, to the use of the husband for life ; then to the use, intent, and purpose that the wife may receive a rent-charge of such a sum as her jointure, and in bar of dower, with powers of distress and entry ; then to trustees for the term of two hundred years, for securing such rent-charge ; then to trustees, for the term of five hundred years, for raising portions for younger children ; then to the use of the first and other sons of the marriage in tail

male, with remainder to them in tail general; and, in default of such issue, to the daughters in tail general, with cross remainders in tail, with remainder to the settlor's right heirs. There should be provisos for cesser of the terms on performance of the trusts of the same. The usual powers in such a settlement are to lease, sell, exchange, and sometimes, also, partition or enfranchise, that receipts of trustees shall be good discharges, and to appoint new trustees, and for their indemnity. Then follow covenants for title. Sometimes there are powers for the successive tenants for life to jointure and charge with portions, when respectively in possession, with a proviso that no more than a certain sum shall be chargeable on the estate at any one time. Where real estate is directed to be sold and the proceeds settled as personalty, it is usual for the property to be conveyed by a separate deed upon trusts for sale, and to stand possessed of the net proceeds upon the trusts of an indenture of even date, being the settlement, with power for the trustees to give receipts.

A will is an instrument by which a person disposes of his property after his decease, until which event it is to remain ambulatory and inoperative.<sup>1</sup> 'A testament,' writes St. Paul, 'is of no effect until the death of the testator.'

Nature of a  
will.

<sup>1</sup> 11 Byth. and Jarm., 2.

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The law has not required to the validity of a will that it should assume any particular form or be expressed in testamentary language. It is only necessary that the instrument should declare the intentions of the deceased owner respecting the posthumous destination of his property.<sup>1</sup> But the terms of the instrument must be altogether testamentary, for if it be in the form of a deed, the fact of the grantor reserving to himself a life interest with a general power of revocation, will not make the document testamentary.<sup>2</sup>

Instructions for a will.

Instructions for a will should be taken from the testator himself, and enquiry should be made as to his personal position and that of his family, and of the objects of his bounty, and as to the nature and extent of his property.<sup>3</sup> Where a testator is *in extremis*, it is advisable that the instructions, if sufficiently expressed to convey his intentions, should be duly signed and attested according to the Wills Act, in order to guard against sudden death or incapacity occurring before the preparation and execution of the more formal instrument.<sup>4</sup>

How a will is prepared.

A will is prepared in the first person, and commences with the formal statement or de-

<sup>1</sup> 11 Byth. and Jarm., 2, 3. <sup>2</sup> *Tompson v. Browne*, 3 M. and K. 32.

<sup>3</sup> *Hayes and Jarman, Wills*, 514.

<sup>4</sup> *Id.* 102, n.

claration, 'This is the last will and testament of me, A. B. of,' &c. Directions as to the funeral and payment of debts are now generally omitted. The will proceeds at once to the specific legacies, that is, gifts of household furniture, plate, books, or any particular article, such as a watch or piece of jewellery. Then come the pecuniary legacies and annuities, and afterwards specific devises of houses or land, then the general devise and bequest of the real and personal estate and the trusts or dispositions of the same. Then follow the different powers and other clauses, such as to lease, sell, exchange, for maintenance, to give receipts, compound debts, and appoint new trustees. Then should come a devise of trust and mortgage estates, in all cases where it is at all probable that the testator should have any such. Then follows the constitution of guardians, where necessary, to the testator's infant children, and finally the appointment of executors. The will concludes with the solemn statement—'And I hereby revoke every or any other will or testamentary disposition by me heretofore made, and declare this writing to be my last will and testament.' The testatum clause is then added, which in a will always contains the date. It is important to bear in mind that the attestation clause in a will,

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though formal, is not essential if the requisites of the law are in fact complied with. Still, it is desirable that the attestation clause should accurately state the formalities, which of course at the same time should be strictly pursued. Witnesses of intelligence and respectability should be selected, and preference is to be given to professional men, whose subscription of the memorandum of attestation raises a presumption that the formalities of execution have been strictly attended to. Moreover, there is greater facility in finding such witnesses, if living, or in proving their handwriting, if dead. The witnesses should not be persons who, or whose wives or husbands, take any benefit under the will.<sup>1</sup>

Schedules  
to wills.

It is suggested in an established work that schedules, as they would relieve the body of the will from much matter which interferes with the continuity of the instrument, might often be usefully adopted in the preparation of wills, but care should be taken that the signature of the testator is underneath or follows the schedules.<sup>2</sup> With great respect, however, for the eminent authors of this work, we should not recommend such practice to be followed.

Disposition  
should  
be com-  
plete in  
itself.

In the framing wills it is generally desirable

<sup>1</sup> Hayes and Jarman, Wills, 101, 102, n.

<sup>2</sup> Id. 441, n.

that each disposition should be complete in itself; but where several dispositions occur which require the same provision, as a power for investing and varying investments, a general clause may with advantage be applied to the whole.<sup>1</sup>

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Where copyholds are devised, it is desirable that the executors or trustees should either be empowered or directed to sell and convey them, which authority will have operation as a common law power, or else they should be devised to such uses as the executors or trustees shall appoint. In either case, the fine on admittance of the executors or trustees, which would otherwise be necessary, will be saved, and the purchaser alone need be admitted.<sup>2</sup>

Devise of  
copyholds.

When property in mortgage is devised, then the same will be liable to the mortgage debt under Locke King's Act;<sup>3</sup> and therefore if a testator wishes to give a direction which shall be deemed a declaration of an intention contrary to the rule laid down by this Act, it must be a direction applying to his mortgage debts in such terms as distinctly and unmistakably to refer to or describe them.<sup>4</sup> The best course

Property  
in mort-  
gage.

<sup>1</sup> Hayes and Jarman, Wills, 212, n.

<sup>2</sup> Glass v. Richardson, 9 Hare, 698; s. c. on app., 2 De G. M. and G. 658; Reg. v. Wilson, 11 W.R. 70, Q.B.

<sup>3</sup> 17 & 18 Vict. c. 113, explained by 30 & 31 Vict. c. 69, s. 1.

<sup>4</sup> Nelson v. Page, 7 L.R., Eq. 25.

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is for the solicitor to make enquiry of the testator whether it be his intention that the devisee should take the property subject to the mortgage, or that the debt should be paid out of the residuary estate.

Prepara-  
tion of  
codicils.

No person should attempt to prepare a codicil which is intended to revoke, alter, or modify any disposition in the will or in a previous codicil without previously seeing such prior testamentary document, the contents of which are often very imperfectly recollected and stated by the testator himself.<sup>1</sup>

Draft of  
will  
should be  
submitted  
to client.

Where there is time for doing so, and the will contains any special provisions, the draft and analysis or outline should be submitted to the client for his perusal, accompanied by marginal notes, pointing out any difficulties which may appear likely to arise from any parts of the proposed will, and suggesting the mode in which the general wishes of the testator may be more conveniently carried into effect.<sup>2</sup>

The de-  
pository  
for wills.

Under the provisions of the Court of Probate Act, 1857,<sup>3</sup> a depository for the wills and codicils of living persons has now been provided at the Principal Registry, No. 6, Great Knight Rider Street, Doctors' Commons. Wills en-

<sup>1</sup> Hayes and Jarman, Wills, 525.      <sup>2</sup> 2 Rouse, Pr. Conv. 30.

<sup>3</sup> 20 & 21 Vict. c. 77, s. 91.



closed in sealed envelopes are received by the registrars at the principal or any district registry, and placed in or forwarded to the depository upon compliance with the prescribed regulations and payment of the necessary fees. Envelopes for wills and codicils, with the necessary endorsements and forms of affidavits, may be had on application to the Record Keepers at the Principal Registry.<sup>1</sup> The expediency of such a depository has been recognised by the Court of Probate.<sup>2</sup>

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Under the Acts of 55 Geo. III. c. 184, and 16 & 17 Vict. c. 51, either legacy or succession duty is payable on property at the following rates:—where the successor, legatee, or recipient is the lineal issue or ancestor of the predecessor, testator, or intestate, one per cent.; where a brother or sister, or a descendant of a brother or sister, three per cent.; where a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, five per cent.; where a brother or sister of a grandfather or grandmother, six per cent.; and where a person in any other degree of collateral consanguinity, or a stranger in blood, ten per cent.<sup>3</sup> The administration duty

Legacy  
and suc-  
cession  
duty

<sup>1</sup> Hayes and Jarman, Wills, 809, n., 560, 561.

<sup>2</sup> Johnson v. Lyford, 1 L.R. Prob. 546.

<sup>3</sup> Hayes and Jarman, Wills, 567.

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on an intestate's estate is half as much again as the probate duty on a will disposing of property to the same amount.<sup>1</sup>

Property  
vested in  
trustee  
under the  
Bank-  
ruptcy Act.

Under the Bankruptcy Act, 1869,<sup>2</sup> the creditors are empowered (by resolution at a general meeting) to appoint some fit person, whether a creditor or not, to be a trustee of the property of the bankrupt. Until a trustee is so appointed, the registrar is to be the trustee, and immediately upon the order of adjudication being made, the property of the bankrupt is to vest in the registrar. On the appointment of a trustee, the property is forthwith to pass to and vest in the trustee appointed.<sup>3</sup>

Assign-  
ment of  
policies.

Under the 'Policies of Assurance Act, 1867,'<sup>4</sup> assignees of policies are entitled to sue at law in their own names,<sup>5</sup> but written notice of the assignment must be given to the Assurance Office, at their principal place of business; and the date on which such notice shall be received shall regulate the priority of all claims under any assignment.<sup>6</sup> These assignments may be made either by endorsement on the policy or by a separate instrument, in the form prescribed by the Act.<sup>7</sup> The Assurance Company is bound, on request in writing, to give an acknowledg-

<sup>1</sup> Hayes and Jarman, Wills, 564.    <sup>2</sup> 32 & 33 Vict. c. 71, s. 14.

<sup>3</sup> Id. s. 17.

<sup>4</sup> 30 & 31 Vict. c. 144.

<sup>5</sup> Id. s. 1.

<sup>6</sup> Id. s. 3.

<sup>7</sup> Id. s. 5 and sch.

ment in writing of the receipt of such notice, upon payment of a fee of five shillings.<sup>1</sup> It would, we think, be advisable to obtain such acknowledgment, especially as it is rendered conclusive evidence of the receipt of the notice.

**INTRO-  
DUCTION**

Personal chattels may be transferred either by delivery without deed, or by deed with or without delivery. Where the latter mode is adopted, the deed of transfer is called a 'Bill of Sale.'<sup>2</sup> Except in those cases where chattels personal pass by actual delivery, any assignment of the same is attended with considerable danger and difficulty. It must in all cases, except where comprised in a marriage settlement, be registered under the Bills of Sales Act.<sup>3</sup>

Transfer  
of per-  
sonal  
chattels.

With reference to land situate in Middlesex or Yorkshire, it is necessary to have any deed or will disposing of the same registered. For such purpose a memorial must be made under the hand and seal of one of the grantors or grantees, attested by two witnesses, one of whom must be one of the witnesses to the deed. The witness must prove the execution of the deed and memorial on oath before the registrar or commissioner in Chancery. In the case of a will, the memorial must be made under the hand and

As to land  
in register  
counties.

<sup>1</sup> 30 & 31 Vict. c. 44, s. 6.

<sup>2</sup> 1 Prid. Conv. 629.

<sup>3</sup> 17 & 18 Vict. c. 36.

INTRO-  
DUCTION

seal of one of the devisees attested by two witnesses, one of whom must prove the memorial in like manner.<sup>1</sup> Forms of these memorials are supplied by the registrar.<sup>2</sup>

<sup>1</sup> 2 Prid. Conv. 584, n.

<sup>2</sup> 2 Rouse, Pr. Conv. 502.

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**PART I.**

**COMMON FORMS.**



## CHAPTER I.

### GENERAL WORDS. (a)

#### 1.

#### *General Words for Farms.*

AND all outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadows and pasture feedings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture, and of turbary, and other commonable rights, hedges,

CHAP.  
I.  
FORM 1.  
GENERAL  
WORDS  
FOR  
FARMS.

(a) Though there is no question but that all buildings, easements, and other things which by law are appurtenant to a manor, messuage, or land, will pass by the conveyance of the property itself, yet the practice of conveyancers is to add to the description of the property 'general words,' enumerating every species of building, easement, or other thing which can be supposed to be appurtenant to, or held or enjoyed with, the property. The only real use of this addition is to pass things which, though appurtenant by reputation, or used or enjoyed with the property, are not strictly appurtenant in law and therefore would not pass unless particularly referred to; but this object could be quite as well attained by a general description as by a particular enumeration. (Barlow v. Rhodes, 1 Cr. and M., 439; James v. Plant, 4 Ad. and El. 749; Dav. Com., F. 222.) The practical result of these observations is that where extreme brevity is desirable the general words may be altogether omitted.

Real use of  
General  
Words.

Lord Brougham's Act (8 & 9 Vict. c. 119, s. 2) supplies the absence of general words in conveyances under that statute, but is not otherwise applicable.

Brougham's Act  
not  
generally  
applicable.

CHAP.  
I.  
FORM 1.  
GENERAL  
WORDS  
FOR  
FARMS.

ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the said (*parcels*) hereby assured, or intended so to be, or any of them respectively, belonging or in anywise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed as part, parcel, or member of the same or any of them respectively.

## 2.

*General Words for Houses.*

FORM 2.  
GENERAL  
WORDS  
FOR  
HOUSES.

And all outhouses, edifices, buildings, cellars, sollars, areas, courts, court-yards, warehouses, pumps, cisterns, sewers, gutters, drains, ways, paths, passages, lights, waters, water-courses, liberties, &c. (*ut supra, General Words for Farms.*)

## 3.

*General Words for a Manor.*

FORM 3.  
GENERAL  
WORDS  
FOR A  
MANOR.

And all and singular messuages, farms, cottages, houses, outhouses, edifices, buildings, barns, stables, coach-houses, dovecotes, yards, gardens, orchards, lands, meadows, pastures, heaths, moors, marshes, wastes, waste-grounds, feedings, parks, warrens, commons, common of pasture, common of turbary, mines, minerals, quarries, mills, mulctures, fairs, markets, customs, tolls, duties, furzes, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, hedges, ditches, freeboards, ways, waters, lands covered with water, fishings, fisheries, fowlings, courts leet, courts baron and other courts, perquisites and profits of courts, reliefs, heriots, fines, sums of money,



amercements, rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, commodities, and emoluments whatsoever to the said manor, lands, tenements, hereditaments, and premises hereby assured or intended so to be, belonging or in anywise appertaining, or with the same, or any of them respectively now demised, leased, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member of the same or any part thereof with their appurtenances.

CHAP.  
I.  
FORM 3.  
GENERAL  
WORDS  
FOR  
MANOR.

## 4.

*General Words for Collieries.*

And all and singular houses, outhouses, edifices, engines, gins, engine-houses, hovels, lodges, staiths, spouts, erections, boilers, cylinders, pumps, waggonways, rails, sleepers, machines, utensils, and all other the fixed stock and materials whatsoever to the said collieries and coal mines, seam and seams of coal, and other hereditaments and premises hereby assured or intended so to be, belonging or in anywise appertaining, or to or with the same held, used, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel, or member thereof or appurtenant thereto.

FORM 4.  
GENERAL  
WORDS  
FOR COL-  
LIERIES.

## 5.

*General Words for an Advowson.*

And all messuages, cottages, edifices, buildings, glebe, and other lands, meadows, pastures, feedings, tithes, oblations, obventions, waters, &c. [as in *general words for farms*] to the said Rectory (or Vicarage) belonging or in anywise appertaining

FORM 5.  
GENERAL  
WORDS  
FOR  
ADVOWSON.

CHAP.  
I.  
FORM 5.  
GENERAL  
WORDS  
FOR  
ADVOWSON

or accepted, reputed, deemed, taken, known, held, occupied or enjoyed, as part, parcel, or member of the same.

6.

*Reference to Plan. (a)*

FORM 6.  
REFERENCE  
TO PLAN.

And the site of which said piece or parcel of land hereby assured or intended so to be, is distinguished by being made of a colour on the map or plan drawn in the margin of these Presents.

7.

*Reference to Plan and Particular in Schedule.*

FORM 7.  
REFER-  
ENCE TO  
PLAN AND  
SCHEDULE.

The ground plot of which said messuage and lands is shown by being made of a colour on the map or plan drawn in the margin of the first skin of these Presents, and a particular of the names or qualities,

Requisites  
of a plan.

(a) Where there is a plan care should be taken to have either a substantive description of the property in the body of the deed or in a schedule, so that the plan shall be merely in aid and explanation of the description, or else to secure that the plan itself is perfectly accurate, particularly where the land is divided for building purposes, or otherwise conveyed by reference to imaginary lines of demarcation. (1 Dart. 486.) So where the occupancy of the property is referred to, care should be taken to have a sufficient and independent description, for otherwise the effect of the deed may depend upon evidence of the fact of occupancy, and then nothing which cannot be strictly proved to have been so occupied will pass. (*Dyne v. Nutley*, 14, C. B., 122.) In many cases of property in towns a plan is the only mode of giving an accurate description of the lines of boundary. (2 Rouse, Pr. Conv. 203.) The reference to a schedule and map has now been rendered more easy by the parochial maps, and schedules made for the commutation of tithes. (Dav. Conc. Pr. Intro. 5, 6.) The use of colours in maps is open to some objection, from the great liability of mistakes or fading. Nevertheless, the utility of describing parcels on maps by colours has been found so great in practice as to be generally adopted.

with the quantities of such premises, with corresponding figures to the figures on the said map or plan is contained in the Schedule to these Presents.

CHAP.  
I.

FORM 7.  
REFER-  
ENCE TO  
PLAN AND  
SCHEDULE.

8.

*The Estate Clause. (a)*

And all the estate, right, title, interest, trust, property, benefit, claim, and demand whatsoever or howsoever of the said (*grantor*), of, in, to, out of, or upon the said lands, hereditaments, and premises hereby assured or intended so to be, or any part thereof, with their rights, members, and appurtenances.

FORM 8.  
ESTATE  
CLAUSE.

9.

*The Deeds' Clause.*

And all such deeds, evidences, writings, and muni-  
cements of title whatsoever, relating to or in anywise

FORM 9.  
DEEDS'  
CLAUSE.

(a) One writer observes that the 'estate' clause is clearly neither a necessary nor a convenient appendage to a deed, and he omits it from his collection, though not, he confesses, without some uneasiness; and he admits that there is a tradition extant of a rent-charge which, having eluded the other snares laid for it by conveyancing ingenuity, at length became entangled in the meshes of an 'estate' clause. (Prior's Conv. 297.) The reversion clause is now always omitted.

The  
'Estate'  
clause.

Where the recital is that the grantor intends to convey certain specific property, and the general words in the premises, including 'interest,' and the like, are sufficiently large to carry other property which is not specified, and is distinct from that which is specified in the recital that other property does not pass. For instance, if a man has a rent-charge upon the fee simple of an estate, and is also the lessee of long leaseholds, and he assigns the leaseholds and all his interest in the land that does not thereby pass the rent-charge which he had upon it, which was never intended to pass under such circumstances. (*Neame v. Moorsom*, 3 Law Rep. Eq. 91, see p. 97, per Romilly, M. R. ; *Francis v. Minton*, W.N., 1867, p. 159, C. P.)

Other pro-  
perty not  
specified  
will not  
pass  
thereby.

CHAP.  
I.  
FORM 9  
DEEDS'  
CLAUSE.

concerning the said (*parcels*) hereby assured or intended so to be, either alone or jointly with any other property of the said (*grantor*) which is of less value, as are now in the custody, possession, or power of the said (*grantor*), or which he can or may procure or obtain without suit at law or in equity.

## CHAPTER II.

## FORMS IN PURCHASE DEEDS.

## 10.

*Covenants for Title to Freeholds. (a)*

AND the said (*vendor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*) his heirs and assigns, in manner

CHAP.  
II.

FORM 10.

COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS.

Nature and  
operation  
of coven-  
ants for  
title.

(a) The covenants for title are generally confined to the acts of the vendor and his heirs, and those claiming under him or them. Where, however, the property has not been purchased by the vendor, but acquired by settlement, descent, or devise; then the covenants should be extended to the acts of the vendor's settlers, ancestors, or testators. Sometimes the name of the individual from whom the property has been acquired is given, and often the general term is used, 'or his or their settlers, ancestors, or testators.' The theory is that where a man purchases an estate of inheritance and afterwards sells the same, it is to be understood *primâ facie* that he sells the estate as he received it, and the purchaser takes the premises granted by him, with covenants against his acts. If the vendor has taken the estate by descent he covenants against his acts and those of his ancestors, and if by devise, then against the acts of the deviser as well as his own. In fact, he sells the land in the same plight that he received it, and not in any degree made worse by him. In the common course of business an abstract is laid before the purchaser's counsel, and, though to a certain extent he relies on the vendor's covenants, still, his chief attention is directed to ascertaining what is the estate, and how far it is supported by the title. (*Browning v. Wright*, 2 Bos. and P. 13.) Where there is a covenant for further assurance there, though a new deed may be required, no covenants for title can be demanded unless there be a stipulation to such effect, for the assurance may be effectual without any covenants. (*Coles v. Kinder*, Cr. Jac. 571.) The covenant that the vendor is seized in fee is now universally omitted as being involved in the more enlarged covenant that he has good right to convey. (*Cornish on Purchase Deeds*, 65, *n.*)

CHAP.  
II.  
FORM 10.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS.  
Covenants  
—good  
right to  
convey.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

Meaning of  
word  
'that' in  
covenant  
against  
incum-  
brances.

following, (that is to say) that, notwithstanding any act, deed, matter, or thing whatsoever, made, done, committed, permitted, or suffered to the contrary, by him the said (*vendor*), the said (*vendor*) now hath in himself good right or full power, and lawful and absolute authority, by these presents, to grant and confirm the said (*parcels*) hereby assured or intended so to be, with the appurtenances unto and to the use of the said (*purchaser*), his heirs and assigns for ever, according to the true intent and meaning of these Presents. And also that it shall be lawful for the said (*purchaser*), his heirs and assigns, henceforth, from time to time, and at all times hereafter, to enter into and upon, have, hold, use, occupy, possess and enjoy the said (*parcels*) hereby assured or intended so to be, with the appurtenances, without any let, suit, trouble, eviction, ejection, expulsion, interruption, hindrance, or denial whatsoever, of, from, or by him, the said (*vendor*) or any other person or persons whomsoever, lawfully, or equitably, and rightfully claiming, or to claim by, from, through, under, or in trust for him, the said (*vendor*) or his heirs; And (*a*) freely, clearly,

(*a*) The old books of precedents contained here the word 'that,' the insertion of which has been the subject of controversy. According to one view it was a pronoun, used emphatically, 'You shall enjoy the estate, and *that* free from incumbrances.' Dr. Johnson, in his Dictionary, gives two passages to such effect, one from the First Epistle of St. Paul to the Corinthians, ch. vi. v. 8: 'Ye do wrong, and defraud, and *that* your brethren;' and the other from 'The Whole Duty of Man': 'We must direct our prayers to right ends, and *that* either in respect of the prayer itself or the things we pray for.' According to another view the word has crept in through inadvertence. (2 Byth. and Jarm. Conv. 264, n.) We have frequently seen the word used in drafts of deeds within our own observation. There is no doubt, however, that it should be omitted.

and absolutely acquitted, exonerated, released, and discharged, or otherwise, by him, the said (*vendor*) his heirs, executors, or administrators, at his and their own costs and charges, in all things effectually protected, defended, saved harmless and kept indemnified of, from, and against all and all manner of former and other gifts, grants, mortgages, leases, sales, jointures, dowers, and right and title of dower, uses, trusts, wills, entails, annuities, legacies, rents, estates, titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, or to be hereafter, had, made, done, committed, occasioned, permitted, or suffered by the said (*vendor*), or his heirs, or any person or persons rightfully claiming, or to claim, by, from, under, through, or in trust for him or them, or by his or their acts, means, consent, default, privity, or procurement. And, moreover, that the said (*vendor*) and his heirs, and all persons who-soever, lawfully or equitably and rightfully claiming, or to claim, by, from, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said (*purchaser*), his heirs or assigns, make, do, execute, and perfect, or cause or procure to be made, done, executed, and perfected, all such further lawful and reasonable acts (*a*), deeds, conveyances, and assurances for further, better, more perfectly, lawfully, and absolutely, or satisfactorily granting, confirming, or otherwise assuring the said (*parcels*), hereby assured or in-

CHAP.  
II.

FORM 10.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS.

Further  
assurance.

(*a*) A covenant to do all reasonable acts means such acts as the law requires; if an unnecessary act be called for it is not a reasonable act. (*Warn v. Bickford*, 9 Pr. 43, see p. 51; *Sugd. V. & P.* 613 ed. 14.)

Further  
assurance.

CHAP.  
IIFORM 10.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS.

tended so to be, unto and to the use of the said (*purchaser*), his heirs and assigns for ever, according to the true intent and meaning of these Presents as by the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required, and be tendered to be made, done, and executed.

## 11.

*Covenants in Assignment of Leaseholds.*FORM 11.  
COVEN-  
ANTS FOR  
TITLE—  
LEASE-  
HOLDS.Covenants  
—good  
right to  
convey.Quiet en-  
joyment.

And the said (*vendor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his executors, administrators, and assigns, in manner following, (that is to say) that, notwithstanding any act, deed, matter, or thing, had, made, done, committed, permitted, or suffered to the contrary, by the said (*vendor*), the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority, by these presents, to assign or otherwise assure the said (*parcels*), hereby assigned or intended so to be, with the appurtenances, unto the said (*purchaser*), his executors, administrators, and assigns, during the residue of the said term of            years, in manner aforesaid according to the true intent and meaning of these Presents. And, further, that, subject to the payment of the said rent, and the observance and performance of the said covenants and conditions, it shall be lawful for the said (*purchaser*), his executors, administrators, and assigns, henceforth, from time to time, and at all times hereafter, during the continuance of the said term of years, peaceably and quietly to enter into and upon, have, hold, use, occupy, possess, and enjoy the said



(*parcels*), hereby assigned or intended so to be, with the appurtenances, without any let, suit, trouble, eviction, ejection, expulsion, intrusion, hindrance, or denial whatsoever, of, from, or by the said (*vendor*), his executors or administrators, or any other person or persons rightfully claiming, or to claim by, from, through, under, or in trust for, him, the said (*vendor*), his executors or administrators; And free and clear and freely and clearly, and absolutely, acquitted, exonerated, released, and discharged, or otherwise, by the said (*vendor*), his heirs, executors, or administrators, at his and their own costs and charges, in all things effectually protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, assignments, surrenders, forfeitures, estates, titles, troubles, liens, charges, and encumbrances whatsoever, heretofore and to be hereafter made, done, committed, occasioned, or suffered by the said (*vendor*), his executors, or administrators, or any other person or persons, rightfully claiming, or to claim, by, from, through, under, or in trust for, him or them. And lastly, that he, the said (*vendor*), his executors and administrators, and every other person or persons who-soever, rightfully claiming or to claim by, from, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said (*purchaser*), his executors, administrators, or assigns, make, do, and execute all such further and other lawful and reasonable acts, deeds, assignments, and other assurances for more effectually or satisfactorily assigning or otherwise assuring the said

CHAP.  
II.

FORM 11.  
COVEN-  
ANTS FOR  
TITLE—  
LEASE-  
HOLDS.

Freedom  
from  
incum-  
brances.

Further  
assurance.

CHAP.  
II.  
FORM 11.  
COVEN-  
ANTS FOR  
TITLE—  
LEASE-  
HOLDS.

(*parcels*) hereby assigned, or intended so to be, unto the said (*purchaser*), his executors, administrators, and assigns, thenceforth during all the residue of the said term of years, according to the true intent and meaning of these presents, as by the said (*purchaser*), his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised, and required, and be tendered to be made, done, and executed.

## 12.

*Covenant by Assignee of Leaseholds to pay rent and perform covenants, and to indemnify Assignee therefrom. (a)*

FORM 12.  
COVENANT  
TO PAY  
RENT AND  
PERFORM  
COVEN-  
ANTS.

And the said (*assignee*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*assignor*), his executors, administrators, and assigns, that he, the said (*assignee*), his executors,

Reason for  
covenant  
to pay rent  
and per-  
form  
covenants.

(a) On disposing of a leasehold property for the rest of the term, if the owner be not the original lessee he can discharge himself of his liability to the lessor by assignment, which, for such reason, is often made to a pauper. Where, however, the owner of the lease is himself the original lessee, he will still continue liable to the lessor, notwithstanding his assignment (Prior's Conv. 63, n.), and hence arises the necessity for obtaining from the assignee a covenant to pay the rent and perform the covenants of the lease.

Where  
such a  
covenant  
must be  
entered  
into.

If the vendor of a leasehold interest be not the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the performance of the covenants, unless he himself be under a similar obligation. (1 Prid. Conv. 205, n.) On a sale by an executor or administrator, the purchaser must enter into this covenant, because the liability of the testator or intestate descends upon the personal representative. (Cochrane v. Robinson, 11 Sim. 378.)

In case of  
bank-  
ruptcy.

Under the old law the assignees of a bankrupt could not require this covenant. (Sugd. Conc., V. & P. 37; Wilkins v. Fry, 1. Mer., 244, see p. 265.) Under the 'Bankruptcy Law Consolidation Act,

administrators, or assigns shall and will truly pay the said rent of £ , and observe, perform, fulfil, and keep the said covenants, provisoes, and conditions reserved and contained in and by the said Indenture of Lease, when and as the same are to be paid, observed, performed, and kept, and also shall and will, from time to time, and at all times for ever hereafter, and at his and their costs and charges, indemnify, save harmless, and keep indemnified, the said (*assignor*), his heirs, executors, administrators, and assigns of and from all actions, suits, claims, and demands, by reason or on account of any neglect or default by or on the part of the said (*assignee*), his executors, administrators, or assigns, in the payment of the said rent, or the observance or performance of the said covenants, provisoes, and conditions.

CHAP.  
II.

FORM 12.  
COVENANT  
TO PAY  
RENT AND  
PERFORM  
COVEN-  
ANTS.

### 13.

#### *Covenants for Title to Freeholds and Leaseholds.*

And the said (*vendör*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his heirs, executors, adminis-

FORM 13.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS AND  
LEASE-  
HOLDS.

1849 '(12 & 13 Vict., c. 106, v. 145), the bankrupt was released from liability if the assignees accepted the lease. Under the present law it would seem that the bankrupt will continue liable on his covenants in the lease until his trustee has either sold or taken to the lease by some act of intentional acceptance, or has disclaimed or lost his right to disclaim. (1 Dart., 512; the Bankruptcy Act, 1869, 32 & 33 Vict., c. 71, ss. 23, 24.) The trustee of a bankrupt, therefore, is not entitled to a covenant for indemnity against the rent and covenants.

Assignors of underleases who, or whose testators or intestates, have not covenanted to perform the covenants in the original lease and underlessees of leases at a peppercorn rent, without a covenant by the underlessee to pay such rent, are also not entitled to a covenant for indemnity. (Dav. Conc. Pr., 105, n.)

Assignors  
of under-  
leases.

CHAP.  
II.

FORM 13.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS AND  
LEASE-  
HOLDS.  
Covenants  
—good  
right to  
convey.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

trators, and assigns, that notwithstanding any act, deed, matter, or thing whatsoever made, done, executed, committed, or suffered to the contrary by him the said (*vendor*), the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority by these presents to grant and confirm the said (*freeholds*), with the appurtenances unto, and to the use of the said (*purchaser*), his heirs and assigns for ever; and also to assign or otherwise assure the said (*leaseholds*) with the appurtenances, unto the said (*purchaser*), his executors, administrators, and assigns, during the residue of the said several terms of years in manner aforesaid, and according to the true intent and meaning of these Presents. And further that it shall be lawful, as to the said (*freeholds*) for the said (*purchaser*), his heirs, and assigns, from time to time, and at all times for ever hereafter, and as to the said (*leaseholds*) [subject to the respective rents and the observance and performance of the respective covenants and conditions] for the said (*purchaser*), his executors, administrators, and assigns, from time to time, and at all times during the continuance of the said several terms of years, peaceably and quietly to enter into and upon, have, hold, use, occupy, possess, and enjoy the said (*leaseholds*), with the appurtenances, without any let, suit, trouble, eviction, ejection, expulsion, interruption, hindrance, or denial whatsoever, of, from, or by the said (*vendor*), his heirs, executors, or administrators, or any person or persons rightfully claiming or to claim by, from, under, or in trust for him or them. And free and clear, and freely, clearly, and absolutely acquitted, released, exonerated, and discharged, or otherwise by him, the said (*vendor*), his heirs, executors, or administrators, at his or their

costs and charges, effectually protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, leases, bargains, sales, assignments, surrenders, jointures, dowers, uses, trusts, wills, entails, forfeitures, annuities, legacies, rents, estates, titles, troubles, liens, charges, and encumbrances whatsoever, heretofore and to be hereafter made, done, committed, occasioned, permitted, or suffered by the said (*vend*or), or any person or persons rightfully claiming or to claim by, from, under, through, or in trust for him or them, or by his or their acts, means, consent, default, privity, or procurement. And, moreover, that the said (*vend*or), his heirs, executors, and administrators, and all persons rightfully claiming, or to claim by, from, through, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said (*pur*chaser), his heirs, executors, administrators, and assigns, make, do, execute, and perfect all such further and other lawful and reasonable acts, deeds, conveyances, assignments, and other assurances in the law whatsoever, for further, better, more perfectly, lawfully, and absolutely, or satisfactorily granting, assigning, confirming, or otherwise assuring the said (*freehold parcels*), with the appurtenances, unto and to the use of the said (*pur*chaser), his heirs and assigns for ever; And also for further, better, and more effectually or satisfactorily assigning and assuring the said (*leasehold parcels*), with the appurtenances, unto the said (*pur*chaser), his executors, administrators, and assigns thenceforth, during all the then residue of the said several terms of years, according to the

CHAP.  
II.

FORM 13.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS AND  
LEASE-  
HOLDS.

Further  
assurance.

CHAP.  
II.

FORM 13.  
COVEN-  
ANTS FOR  
TITLE—  
FREE-  
HOLDS AND  
LEASE-  
HOLDS.

true intent and meaning of these presents, as by the said (*purchaser*), his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required, and be tendered to be made, done, and executed.

14.

*Covenants in Assignment of Choses en Action.*

FORM 14.  
COVEN-  
ANTS FOR  
TITLE—  
CHOSSES EN  
ACTION.

Covenants  
—good  
right to  
assign.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

And the said (*assignor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*assignee*), his executors, administrators, and assigns, in manner following, (that is to say): that the said (*assignor*) now hath in himself good right or full power, and lawful and absolute authority, by these presents, to assign and transfer the said (*property*) hereby assigned or intended so to be, unto the said (*assignee*), his executors, administrators, and assigns, absolutely, according to the true intent and meaning of these Presents; And also that it shall be lawful for the said (*assignee*), his executors, administrators, and assigns, to have, hold, receive, take, and enjoy the said (*property*) hereby assigned, or intended so to be, without any let, suit, interruption, or denial of him, the said (*assignor*), his executors, or administrators, or any person or persons rightfully claiming by, from, under, or in trust for him or them; And also that the said (*property*) hereby assigned, or intended so to be, are free from all incumbrances made, done, or committed by him the said (*assignor*). And further, that the said (*assignor*), his executors or administrators shall not, nor will, at any time or times hereafter, without the consent in writing of the said (*assignee*), his executors, or administrators, or the

Order, Judgment, or Decree of some Court of Law or Equity for that purpose first had and obtained, receive, release, acquit, or discharge all or any part of the said (*property*) hereby assigned or intended so to be, nor without such consent, order, judgment, or decree revoke or countermand all or any of the powers and authorities hereinbefore contained, and given to the said (*assignee*), his executors, administrators, and assigns. And lastly, that the said (*assignor*), his executors and administrators, and all persons rightfully claiming or to claim by, from, under, or in trust for him and them, shall and will, from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said (*assignee*), his executors, administrators, or assigns, make, do, and execute all such further and other lawful and reasonable acts, (a) deeds, assignments, powers, authorities, and other assurances whatsoever for further, better, more perfectly, lawfully, and absolutely or satisfactorily assigning or assuring unto or vesting in the said (*assignee*), his executors, administrators, or assigns, and also authorising him or them to receive and obtain payment of the said (*property*) hereby assigned or intended so to be, as by the said (*assignee*), his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed.

CHAP.  
II.

FORM 14.  
COVEN-  
ANTS FOR  
TITLE—  
CHOSSES EN  
ACTION.

Not to  
release  
property  
nor revoke  
powers.  
Further  
assurance.

(a) The law does not imply warranty of present title to assign in the case of personal chattels, but a covenant to do all reasonable acts for further and better assigning and transferring chattels comprised in the deed, means merely that neither the covenantor nor those claiming under him will do anything to interrupt the quiet enjoyment of the chattels by the parties contemplated by the deed. (*Ward v. Audland*, 16 M. & W. 862, see p. 876.)

Further  
assurance  
of chattels.

## 15.

*Covenant that no act has been done to Encumber.*

CHAP.  
II.  
FORM 15.  
COVENANT  
AGAINST  
INCUM-  
BRANCES.

And each of them the said (*trustees*), for himself, his heirs, executors, and administrators, and as to and concerning only his own respective acts, deeds, and defaults, doth hereby covenant with the said (*purchaser*), his heirs and assigns, that they the said Covenanting Parties respectively, have not made, done, executed, committed, permitted, or wilfully or knowingly suffered any act, deed, matter, or thing whatsoever whereby or by reason or means whereof the said (*premises*) hereby assured or intended so to be, or any part thereof, are, is, can, shall, or may be impeached, charged, encumbered, or in anywise affected in title, charge, estate, or otherwise howsoever.

## 16.

*Covenant for the Production of Deeds.*

FORM 16.  
COVENANT  
FOR PRO-  
DUCTION.

Covenants  
—to pro-  
duce deeds.

And he the said (*vendor*), doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said (*purchaser*), his heirs and assigns, that the said (*vendor*), his heirs, executors, administrators, or assigns (unless hindered or prevented by fire or other inevitable accident), shall and will from time to time hereafter, on every reasonable request in writing, and at the costs and charges of the said (*purchaser*), his heirs, or assigns, produce and show forth, or cause or procure to be produced and shown forth in England or Wales, and not elsewhere, unto the said (*purchaser*), his heirs, or assigns, or his or their attorney, solicitor, agent, or counsel,



or to any other person or persons whom he or they shall direct or appoint, or to or before any court or courts of law or equity, or at or upon any trial or trials, hearing or hearings, commission or commissions for the examination of witnesses or otherwise, as occasion shall be, or require all, any, or either of the several deeds, evidences, and writings specified or mentioned in the schedule to these presents for the proof, manifestation, support, or defence of the title of the said (*purchaser*), his heirs or assigns, of, in, or to the said (*parcels*) hereby assured or intended so to be; and that the said (*vendor*), his heirs or assigns, shall not nor will at any time hereafter wilfully deface, cancel, or obliterate any or either of the same deeds, evidences, and writings. And also that the said (*vendor*), his heirs, executors, administrators, or assigns, from time to time, on the request and at the costs and charges aforesaid, shall or will give or deliver to the said (*purchaser*), his heirs or assigns, a fair, true, neat, and attested copy, extract, or abstract of each, any, or either of the same deeds, evidences, and writings respectively, and suffer such copies, extracts, or abstracts to be examined or compared with the originals, either by the said (*purchaser*), his heirs or assigns, or any other person or persons whom he or they shall appoint. (a) [A. Provided always nevertheless that if the said (*vendor*), his heirs, executors, administrators, or assigns shall at any time hereafter deliver over the said deeds, evidences, and writings mentioned in the schedule hereunder written to any future purchaser or purchasers of the hereditaments therein

CHAP.  
II.

FORM 16.  
COVENANT  
FOR PRO-  
DUCTION.

Not to de-  
face same,

and to give  
attested  
copies.

Proviso for  
release of  
covenants.

(a) Where the covenant to produce deeds is entered into by an absolute owner of the property, then this proviso, A. to B., will be omitted.

CHAP.  
II.  
FORM 16.  
COVENANT  
FOR PRO-  
DUCTION.

comprised, or any part thereof, and shall also at his or their expense deliver unto the said (*purchaser*), his heirs or assigns, a deed containing proper covenants from such purchaser or purchasers for the production of the said several deeds, evidences, and writings, similar to the covenants herein contained, or as near thereto as circumstances will admit, then and in such case the covenants hereinbefore contained on the part of the said (*vendor*), his heirs, executors, administrators, or assigns shall, subject and without prejudice to any action or actions, cause or causes of action which shall have accrued by virtue of these presents, be considered as virtually released and discharged to all intents and purposes whatsoever. B.]

## 17.

*Covenant to Surrender Copyholds to Purchaser.*

FORM 17.  
COVENANT  
TO SUR-  
RENDER.

And this Indenture further Witnesseth, that, in pursuance and further performance of the said contract, and in consideration of the sum of £ sterling, the apportioned price of the said copyhold hereditaments, to the said (*vendor*), now paid by the said (*purchaser*)—[the receipt, &c.]—he, the said (*vendor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his heirs and assigns, that the said (*vendor*) and his heirs, and all other necessary parties, shall and will, at the costs and charges of the said (*purchaser*), his heirs or assigns, at or before the next Court to be holden in and for the said Manor of \_\_\_\_\_, in the county of \_\_\_\_\_, surrender, or cause to be surrendered, into the hands of

the lord of the said manor, according to the custom thereof, all (*parcels*), and all ways, paths, passages, waters, watercourses, commons, common of pasture, liberties, privileges, easements, profits, commodities, and appurtenances whatsoever to the said messuages, lands, hereditaments, and premises, or any part thereof belonging, or in anywise appertaining, to the use of the said (*purchaser*), his heirs and assigns, to be held, of the lord of the said manor, by the rents and services therefore due and of right accustomed, and shall and will cause and procure the said (*purchaser*), his heirs or assigns, at his or their like costs, to be admitted a tenant or tenants thereto accordingly.

CHAP.  
II.  
FORM 17.  
COVENANT  
TO SUR-  
RENDER.

18.

*Uses to Prevent Right of Dower in Wife.*

To such uses, upon such trusts, for such intents and purposes, and in such manner and form as the said (*purchaser*) from time to time, by any deed or deeds, shall direct or appoint, and in default of, and until, and subject to, every or any such direction or appointment then to the use of the said (*purchaser*) and his assigns, during the term of his natural life, and, after the determination of that estate by any means, then to the use of the said (*dower trustee*), his heirs and assigns, during the natural life of the said (*purchaser*), upon trust for the said (*purchaser*) and his assigns, and to the intent, as the said (*purchaser*) doth hereby declare and direct that no widow whom he may leave shall be entitled to dower out of the said premises or any part thereof, and after the determination of the several estates hereinbefore

FORM 18.  
DOVER  
USES.

CHAP.  
II

FORM 18.  
DOWER  
USES.

limited ; then to the use of the said (*purchaser*), his heirs and assigns for ever, and to, for, and upon no other use, trust, intent, or purpose whatsoever. (a)

19.

*Declaration that Widow of Purchaser shall not be Entitled to Dower. (b)*

FORM 19.  
DECLARA-  
TION  
AGAINST  
DOWER.

And the said (*purchaser*) doth hereby declare and direct that, in case he, the said (*purchaser*), shall die leaving a widow, such widow shall not be entitled to dower out of the said (*parcels*) hereby assured or intended so to be, or any part thereof.

(a) These dower uses are now only applicable in the rare cases of conveyances to purchasers who have been married on or before the 1st January, 1834. As the dower uses, however, are so frequently referred to and commented on in the text books, it has been considered desirable to insert such a form in the present collection for the instruction of the student.

Declara-  
tion  
against  
dower.

(b) Though the declaration against dower has received some condemnation (2 Dav. Conv., 179, 180), yet it has become almost universal to insert such a clause in conveyances as a common form without express instructions to such effect. Some practitioners, however, think it better not to do so except when so directed, since an owner of land may now by any disposition, by deed or will, deprive his wife of dower. (1 Prid. Conv., 190 n.) There is certainly something to be said in favour of the view that the widow's claim to a share for life in her husband's estate should be preferred to that of the heir, but still, practically, it has been found that it is better that titles should be unencumbered with what at best is a somewhat inconvenient and uncertain way of providing for the widow of an owner of land. Sometimes a declaration is inserted that the purchaser was married since the 1st of January, 1834, in order to preclude inquiry on that head, but on account of the distance of time since the passing of the Dower Act, such a statement seems now scarcely necessary. The declaration will be a bar to dower, even though the purchaser do not execute the conveyance. It is sufficient if the declaration be contained in the deed. (*Fairley v. Tuck*, 6 W. R., 9 V. C. K.)

Will bar  
dower  
though  
purchaser  
do not  
execute.

## 20.

*Letter of Attorney. (a)*

And the said (*assignor*) doth by these presents constitute and appoint the said (*assignee*), his executors, administrators, and assigns, to be the attorney or attorneys of, and in the name or names of him, the said (*assignor*), his executors or administrators, to demand, sue for, and receive of and from whomsoever it may concern, the said (*property assigned*), and to sign and give receipts and discharges for the same or any part thereof, and generally to do and execute any other act, matter, or thing for recovering, receiving, and obtaining payment of the same, and to depute any attorney or attorneys for all or any of the purposes aforesaid, and at discretion to revoke such appointment, and to depute any other attorney or attorneys in his or their place; and the said (*assignor*) doth hereby undertake to ratify and confirm as valid and effectual all acts and deeds by the said (*assignee*), his executors, administrators, or assigns, or his or their substitute or substitutes, to be lawfully done or caused to be done in the premises, by virtue of these presents.

CHAP.  
II.  
FORM 20.  
LETTER OF  
ATTORNEY.

(a) 'The Policies of Assurance Act, 1867,' 30 & 31 Vict., c. 144, renders policies in effect assignable at law, and therefore the power of attorney in such case is no longer necessary.

Policies  
now as-  
signable at  
law.

## CHAPTER III.

## FORMS IN MORTGAGES.

## 21.

*Covenant for Payment of Principal Money and Interest.*

CHAP.  
III.  
FORM 21.  
COVENANT  
FOR PAY-  
MENT.

Now this Indenture Witnesseth that, in pursuance of the said Agreement in such behalf, and in consideration of the sum of £                      sterling to the said (*mortgagor*), now paid by the said (*mortgagee*), the receipt of which said sum he, the said (*mortgagor*), doth hereby acknowledge, and therefrom for ever release the said (*mortgagee*), his heirs, executors, administrators, and assigns; he, the said (*mortgagor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he, the said (*mortgagor*), his heirs, executors, or administrators, shall and will truly pay unto the said (*mortgagee*), his executors, administrators, or assigns, the principal sum of £                      sterling upon the                      day of                      , 18                      . (a) And also shall and will

(a) It is better to name a day one year after the date of the mortgage, for otherwise it will be necessary to have a covenant for payment of the interest, if the principal sum should remain unpaid after the expiration of six calendar months—the period often stated in mortgage deeds.

in the meantime, or during the continuance of this security, truly pay unto the said (*mortgagee*), his executors, administrators, or assigns, interest on the said principal sum of £ , at the rate of per cent. per annum, by equal half-yearly payments, on the day of and the day of

in every year ; and shall and will make all such payments of principal money and interest without any deduction or abatement whatsoever (except as regards income-tax), and according to the true intent and meaning of these presents.

CHAP.  
III.

FORM 21.  
COVENANT  
FOR PAY-  
MENT.

## 22.

*Covenant to Pay Mortgage Money and Interest Within  
after Demand.*

Now this Indenture Witnesseth that, in pursuance of the said agreement, and in consideration, &c., he, the said (*mortgagor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he, the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall and will, within

FORM 22.  
COVENANT  
FOR PAY-  
MENT  
AFTER  
DEMAND.

after notice in writing, for such purpose, by or on behalf of the said (*mortgagee*) his executors, administrators, or assigns, to be given unto the said (*mortgagor*), his heirs, executors, administrators, or assigns, or to be left for him or them, at his or their last or most usual place of residence or abode in England or Wales, truly pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, the said principal sum of £ , so now advanced by the said (*mortgagee*), as aforesaid, and all such

CHAP.  
III  
FORM 22.  
COVENANT  
FOR PAY-  
MENT  
AFTER  
DEMAND.

further sum or sums of money as may have been advanced by the said (*mortgagee*) unto or on account of the said (*mortgagor*). And also shall and will in the meantime, and until such day of payment, truly pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, interest after the rate of £            per cent. per annum on the said sum of £           , so now advanced, and on the said further sum or sums of money so to be advanced as aforesaid, by half-yearly payments, on the            day of           , and the            day of           , in every year, as to the said sum of £           , now advanced as from the day of the date of these presents, and as to the said sum or sums of money so to be advanced as from the day, or respective days, of advancing the same, and shall and will make all such payments of principal money and interest without any deduction or abatement whatsoever, except as aforesaid.

## 23.

*Covenant to Pay Promissory Notes.*

FORM 23.  
COVENANT  
TO PAY  
PROMIS-  
SORY  
NOTES.

Now this Indenture Witnesseth that, in pursuance of the said agreement in such behalf, and in consideration, &c., he, the said (*mortgagor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he, the said (*mortgagor*), his heirs, executors, or administrators, shall and will, as and when the same respectively shall become due, truly pay and honor the said promissory note for £           , so already given by the said (*mortgagor*)



as aforesaid, and every or any other promissory note to be given by him unto the said (*mortgagee*), or shall and will, within                      calendar months after such demand in writing, as aforesaid, pay and take up the promissory note or notes, the payment whereof respectively shall be so demanded, as aforesaid, and shall and will pay all the principal moneys and interest secured, or to be secured, by the said promissory note or notes, without any deduction or abatement, except as aforesaid, and according to the true intent and meaning of these presents.

CHAP.  
III.  
FORM 23.  
COVENANT  
TO PAY  
PROMIS-  
SORY  
NOTES.

24.

*Proviso for Redemption.*

Provided always, and it is hereby declared and agreed that, if the said (*mortgagor*), his heirs, executors, administrators, or assigns, do and shall pay unto the said (*mortgagee*), his executors, administrators, or assigns, the sum of £                      sterling, upon the                      day of                      , 18                      , and in the meantime, or during the continuance of, the said sum of £                      , upon this security do and shall, half-yearly, on the                      day of                      , and the                      day of                      in every year, pay unto the said (*mortgagee*), his executors, administrators, or assigns, interest for the said sum of £                      , after the rate of £                      per cent. per annum ; and if the said (*mortgagor*), his heirs, executors, administrators, or assigns, do and shall make the said payments of principal money and interest, without any deduction or abatement whatsoever, other than and except the income-

FORM 24.  
PROVISO  
FOR RE-  
DEMPTION.

CHAP.  
III.FORM 24.  
PROVISO  
FOR RE-  
DEMPTION.

tax (a), then the said (*mortgagee*), his heirs or assigns, do and shall, upon the request, and at the costs and charges of, the said (*mortgagor*), his heirs or assigns, reconvey the said premises hereby mortgaged, or intended so to be, unto the said (*mortgagor*), his heirs or assigns, or as he or they shall direct, anything hereinbefore contained to the contrary notwithstanding.

## 25.

*Proviso for Redemption where Money to be paid within  
after Demand.*

FORM 25.  
PROVISO  
FOR RE-  
DEMPTION  
AFTER  
DEMAND.

Provided always, and it is hereby declared and agreed that, if the said (*mortgagor*), his heirs, executors, administrators, or assigns, within after demand, in writing, for such purpose, by or on behalf of the said (*mortgagee*), his executors, administrators, or assigns, to be given unto the said (*mortgagor*), his heirs, executors, administrators, or assigns, or to be left for him or them at his or their last or most usual place of residence or abode in England or Wales, do pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or as-

Deduction  
of Income-  
Tax.

(a) The words, 'excepting the income-tax,' are surplusage, though commonly inserted. By 16 & 17 Vict., c. 84, s. 40, and 27 & 28 Vict., c. 18, s. 15, persons liable to the payment of any yearly interest may deduct the duty, and such deduction is to be allowed by the person to whom the payment is to be made under a penalty of £50; and by 5 & 6 Vict., c. 35, s. 103, all contracts, covenants, and agreements for payment of any interest in full, without allowing the deduction of the income-tax, are to be void. It follows, therefore, that not only has the mortgagor the right to make the deduction of income-tax without express contract, but he cannot by contract deprive himself of this right. (2 Dav. Conv., 858 n.)

signs, the sum of £                      so already advanced by the said (*mortgagee*), and also such further sum or sums of money as hereafter may have been advanced by the said (*mortgagee*) unto or on account of the said (*mortgagor*). And also do and shall in the meantime, and up to such day of payment, pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, interest after the rate of £                      per cent. per annum on the said sum of £                      so already advanced, and the said further sum or sums of money so to be advanced by half-yearly payments on the                      day of                      , and the                      day of                      , in every year, as to the said sum of £                      now advanced from the day of the date of these presents, and on the further sum or sums of money so to be advanced from the day, or respective days, of advancing the same ; and do make all such payments of principal money and interest, without any deduction or abatement whatsoever (except in respect of property or income-tax), then the said (*mortgagee*), his heirs, executors, administrators, or assigns shall, at the request and costs of the said (*mortgagor*), his heirs or assigns, reconvey the said premises hereby mortgaged, or intended so to be, unto and to the use of the said (*mortgagor*), his heirs and assigns, or as he or they shall direct, anything hereinbefore contained to the contrary notwithstanding.

CHAP.  
III.

FORM 26.  
PROVISO  
FOR RE-  
DEMPTION  
AFTER  
DEMAND.

26.

*Proviso for Redemption on Payment by Instalments.*

Provided always, and it is hereby declared and agreed, that if the said (*mortgagor*), his heirs, executors, administrators, or assigns, do and shall pay, or cause

FORM 26.  
PROVISO  
FOR RE-  
DEMPTION  
IN CASE OF  
INSTAL-  
MENTS.

CHAP.  
III.  
FORM 26.  
PROVISO  
FOR RE-  
DEMPTION  
IN CASE OF  
INSTAL-  
MENTS.

to be paid, unto the said (*mortgagee*), his executors, administrators, or assigns, the sum of £            sterling, with interest for the same, by the instalments and in manner hereinafter mentioned, that is to say, the sum of £           , part of the said sum of £           , upon the            day of           , with interest after the rate of £            per cent. per annum on the said sum of £            as from the day of the date of these presents up to the said            day of           , the sum of £           , further part of the said sum of £           , upon the            day of           , together with interest, after the rate aforesaid, upon and up to that day, as from the said            day of           , or so much of the said sum of £            as then remains unpaid on such last-mentioned day, and the sum of £           , residue of the said sum of £           , on the            day of           , together with interest, after the rate aforesaid, upon and up to that day as from the said            day of           , on so much of the said sum of £            as remains unpaid on such last-mentioned day, and thenceforth during the continuance of the said sum of £           , or any part thereof, upon this security do and shall, half-yearly, upon the            day of           , and the            day of            in every year, truly pay or cause to be paid to the said           , his executors, administrators, or assigns, interest for the said sum of £           , or so much of the same as from time to time shall remain unpaid, after the rate aforesaid; and if the said (*mortgagor*), his heirs, executors, administrators, or assigns, do and shall make the said payments of the said principal sum of £           , and the interest thereof, and every of them, by the instalments and in manner aforesaid, without any deduc-

tion or abatement whatsoever, whether by authority of Parliament or otherwise howsoever (save and except such property or income-tax as a mortgagee would be bound to allow to a mortgagor), then and in such case immediately after such payments shall be made, as aforesaid, the said (*mortgagee*), his heirs or assigns, shall and will, upon the request and at the costs and charges of the said (*mortgagor*), his heirs or assigns, reconvey the said premises hereby mortgaged, or intended so to be, unto the said (*mortgagor*), his heirs or assigns, or as he or they shall direct, anything hereinbefore contained to the contrary notwithstanding.

CHAP.  
III.  
FORM 26.  
PROVISO  
FOR RE-  
DEMPTION  
IN CASE OF  
INSTAL-  
MENTS.

27.

*Proviso for Redemption in the Case of Promissory Notes.*

Provided always, and it is hereby declared and agreed that, if the said (*mortgagor*), his heirs, executors, administrators, or assigns, do and shall truly honour and pay the said promissory note so already given, and every or any such promissory note so to be given by the said (*mortgagor*) to the said (*mortgagee*), as and when due respectively, or do and shall, within calendar months after demand of the same in writing, by or on behalf of the said (*mortgagee*), his executors or administrators, or any indorsee or indorsees of the said promissory note or notes, his or their executors or administrators, for such purpose to be given unto the said (*mortgagor*), his heirs, executors, administrators, or assigns, or to be left for him or them at his or their last and most usual residence in England or Wales, subsequently to such promissory

FORM 27.  
PROVISO  
FOR RE-  
DEMPTION  
AS TO  
PROMIS-  
SORY  
NOTES.

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III.  
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DEMPTION  
AS TO  
PROMIS-  
SORY  
NOTES.

note or notes becoming due, pay and take up the promissory note or notes, the payment whereof may be so demanded, and do and shall make all such payments of the principal moneys and interest secured or to be secured by such promissory note or notes, without any deduction or abatement whatsoever (save and except in respect of such property or income-tax as by law must be allowed in respect thereof), then the said (*mortgagee*), his heirs or assigns, shall and will, upon the request and at the costs and charges of the said (*mortgagor*), his heirs, executors, administrators, or assigns, reconvey or reassure the said (*parcels*) hereby mortgaged, or intended so to be, unto the said (*mortgagor*), his heirs or assigns, or as he or they shall direct, anything hereinbefore contained to the contrary notwithstanding.

## 28.

*Proviso that Money is to Remain for a Certain Time on the Security.*

FORM 28.  
PROVISO  
THAT  
MONEY TO  
REMAIN A  
CERTAIN  
TIME.

Provided also, and it is hereby further declared and agreed, that the said sum of £            is to continue on the security of these presents for            years certain, without any right on the part of the said (*mortgagee*), his executors, administrators, or assigns, to call in or require payment of the same within such period, except in the event hereinafter mentioned, and that the said            and premises hereby assured, or intended so to be, shall not at any time during the term of            years from the day of the date of these presents be redeemed or redeemable at law or in equity, without the consent in writing of the said (*mortgagee*), his executors, administrators, or assigns,

for that purpose first had and obtained; but that if at any time before the       day of       , in the year       , the interest of the said sum of £       , or any part thereof, shall be in arrear and unpaid for one calendar month next after the day or time whereon a half-year's interest shall from time to time become due and payable, then it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, immediately after such default in payment of interest shall be so made as aforesaid, or at any time afterwards, before the said       day of       , in the year       , to call in and compel payment of the said principal sum of £       , or any part thereof, anything hereinbefore contained to the contrary in anywise notwithstanding.

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III.

FORM 28.  
PROVISO  
THAT  
MONEY TO  
REMAIN A  
CERTAIN  
TIME.

29.

*Proviso for Reducing rate of Interest on Punctual Payment. (a)*

Provided also, and it is hereby further declared and agreed, that when, and as often as on the respective days whereon interest shall be payable, by virtue of the provisions herein contained, or within       days

FORM 29.  
PROVISO  
FOR RE-  
DUCING  
INTEREST.

(a) If a mortgagor covenants to pay interest at a certain rate, with a stipulation that, if he makes default in punctual payment, he shall pay interest at a higher rate, the stipulation will be regarded in the nature of a penalty, and will be relieved against in equity. (*Nicholls v. Maynard*, 3 Atk., 519; 5 Byth. & Jarm., 396.) A proviso to reduce the rate of interest is, however, perfectly legal and customary. And where there is such a proviso, reducing interest in case of punctual payment, and the mortgagor fails, he must pay the higher rate of interest, and can have no relief in equity. (*Brown v. Barkham*, 1 P. Wms., 652; *Marquis of Halifax v. Higgins*, 2 Vern., 134.)

Legality of  
proviso to  
reduce rate  
of interest.

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III.FORM 29.  
PROVISO  
FOR RE-  
DUCING  
INTEREST.

afterwards, the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, interest on the said sum of £ , after the rate of £ per cent. per annum, then and so often he, the said (*mortgagee*), his executors, administrators, or assigns, shall and will accept such reduced rate of interest, in lieu and full satisfaction of the interest on the same, after the rate of £ per cent. per annum, which otherwise would be payable by virtue of these presents.

## 30.

*Powers of Sale and Demise, and Covenants for Title,  
in the Case of Freeholds. (a)*

FORM 30.  
POWERS OF  
SALE AND  
DEMISE  
AND CO-  
VENANTS  
—FREE-  
HOLDS.  
Statutory  
power of  
sale.

Provided also, and it is hereby further declared and agreed that, in case default shall be made in payment

(a) Where any principal money is secured by deed on hereditaments of any tenure, the mortgagee, his executors, administrators, and assigns, at any time after the expiration of one year from the time when such principal money becomes payable, or after interest thereon shall be in arrear for six months, or after any omission to pay any premium on any insurance, has now the following statutory powers to the same extent as if they had been in terms conferred by the mortgage, namely, a power after six months' notice to sell the property by public auction or private contract, and to give receipts for the purchase-money, and apply the same in payment of the principal, interest, and costs, and to obtain possession of the deeds, or a conveyance of the legal state, and to convey the property to the purchaser in the usual manner, and to insure and add the premiums paid for any such insurance to the principal secured, and at the same rate of interest (23 & 24 Vict., c. 145, ss. 11-16). But a learned author considers that it is not expedient, as a general rule, to dispense with an express power of sale in a mortgage. (1 Pr. Conv., 561 n.)

Power of  
sale should  
not be dis-  
pensed  
with.



of the said sum of £ , or any part thereof (a), or the interest of the same or any part thereof, for

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FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.

calendar months after any of the days hereinbefore appointed for payment of the same respectively ; then (and although the said [*mortgagee*], his heirs, executors, administrators, or assigns, may have waived or omitted to take advantage of any such prior default in payment of interest), it shall be lawful for the said (*mortgagee*), his heirs or assigns (*b*), when and as he or they may think fit, and without any further consent or concurrence of the said (*mortgagor*), his heirs or assigns (*c*), and notwithstanding the heirs or assigns of the said (*mortgagor*) may be an infant or infants, or under any other disability to sell and absolutely dispose of the said (*parcels*) hereby assured or intended so to be, or any part or parts of the same, either altogether in one lot or by parcels or in several lots, and either by public auction or private contract, or partly in each such mode, and

Power to  
sell.

We may here observe, once for all, that none of the powers conferred by the Trustees and Mortgagees Act, 23 & 24 Vict. c. 145, are to be exerciseable if it be declared in the deed or will that they are not to take effect, and where there is no such declaration, then such powers may be varied or restricted by the deed or will. (*Ibid*, s. 32.)

Restriction  
of powers  
conferred  
by Trustees  
and Mortgagees  
Act.

(a) Where the money is to remain for a term certain on the security, state " upon the day of , being the expiration of the term of years from the day of the date of these presents, or in case default shall be made in payment of the interest," &c.

(b) In the power of sale the word ' assigns ' should always be inserted. (*Saloway v. Strawbridge*, 1 K. & J., 371 ; s. c. on App. 7 De G. M. & G., 594.)

' Assigns '  
in power  
of sale.

(c) It was long doubted whether a mortgagee could sell and make a title to a purchaser by virtue of the power of sale without the concurrence of the mortgagor, and hence, though it has now been for some time settled that he may (2 Bart. Pr. 448 n.), yet some cautious gentlemen still like these words to be retained.

Concurrence  
of mortgagor  
not required.

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III.FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.Power to  
demise.Applica-  
tion of  
purchase  
moneys.

with, under and subject to such provisions and conditions of sale as the said (*mortgagee*), his heirs, executors, administrators, or assigns may deem advisable or expedient, and with full power for him or them to reserve a bidding or biddings upon any such sale or sales by auction, and to buy in, or rescind, modify, or vary the contract or contracts for sale of the same premises, or any of them, and resell the same in or by all or any of the modes or means aforesaid, without being answerable for any loss or expense to be occasioned thereby, and to deal with such contract or contracts, and the deposits or damages thereon as he or they may think fit. (a) [A. And furthermore that it shall be lawful for the said (*mortgagee*), his heirs or assigns, from and after such default in payment, and in the meantime until and without prejudice thereafter to such sale or sales, to demise the said premises or any of them, from time to time, for such term or terms of years, and with or without the reservation of such yearly or other rent or rents, and for such premium or premiums, and in such manner and form as the said (*mortgagee*), his heirs, executors, administrators, or assigns may think expedient. B.] And the said (*mortgagee*), his heirs or assigns, shall or may convey the hereditaments so to be sold unto the purchaser or purchasers thereof, and his and their heirs or assigns, or as he or they may direct or appoint. And it is hereby declared and agreed that the said (*mortgagee*), his heirs, executors, administrators, and assigns, shall stand possessed of the moneys to accrue from such sale or sales, demise or demises, as aforesaid, and

(a) The power to lease within brackets, A. to B., may generally be omitted.

also of the clear rents, issues, and profits (if any) of the said (*parcels*), hereby assured, or intended so to be, which shall be received by him or them, upon trust from and out of the said moneys and rents, in the first place, to deduct and retain his or their charges and expenses of and attending making out the title to the said premises, or the execution of the powers or trusts hereby created or authorised, and the money which he or they shall disburse for the taxes and repairs, or any outgoings in respect of the same premises, or in or about insuring the buildings thereof against loss or damage from fire for any sum not exceeding £           , in case of any default of the said (*mortgagor*), his heirs, executors, administrators, or assigns, under his covenant in that behalf hereinafter contained, or in or about any suit or suits at law, or in equity, for obtaining payment of the said principal money and interest, or obtaining or retaining possession of the same premises, or any of them, or carrying the provisions of these presents into execution, or enforcing the performance of any contract or contracts for sale or demise of the said premises, or any of them ; and in the next place do and shall retain and pay unto and for him the said (*mortgagee*), his executors, administrators, or assigns, the said principal sum of £           , and the interest thereof, from the day of the date of these presents, after the rate of £            per cent. per annum, or so much thereof as may be unpaid, clear from all deductions as aforesaid. And upon further trust that the said (*mortgagee*), his heirs, executors, administrators, and assigns, after raising and retaining or recovering from the said (*parcels*), hereby assured, or intended so to be, the money to be paid and applied as aforesaid,

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POWERS OF  
SALE AND  
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AND CO-  
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POWERS OF  
SALE AND  
DEEDS,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.

do and shall pay the surplus (if any) of the money to be raised under the exercise of the powers aforesaid, which shall remain unapplied for the purposes aforesaid, unto the said (*mortgagor*), his heirs, executors, administrators, or assigns (*a*) ; and also do and shall convey unto and to the use of the said (*mortgagor*), his heirs or assigns, the said (*parcels*), hereby assured, or intended so to be, or such of them as shall then remain unsold. And it is hereby agreed and declared that the person or persons by whom

Direction  
as to pay-  
ment of  
surplus  
moneys.

(*a*) It seems convenient to direct the surplus of the moneys to arise from a sale to be paid to the mortgagor, his heirs, executors, administrators, or assigns, so that whether the sale take place in the lifetime of the mortgagor, or after his death, the surplus will go to the proper representatives. The practice of the most experienced conveyancers is not uniform on this head. Some insert 'heirs, executors, administrators, or assigns,' and others 'heirs or assigns.' (Housman's Handbook, 337.) It would appear, however, as a fact that neither form of words will affect the rights of the representatives. In *Wright v. Rose* (2 Sim. & St. 323), and *Re Clarke's Trusts* (22 Law J. Ch. 230, V. C. P.), the trust was for the 'executors or administrators' of the mortgagor; but as the sale did not take place until after his death, the real representatives were held to be entitled. (See also *Hardey v. Felton*, 14 Law T. Rep., 346.) In *Bourne v. Bourne* (2 Hare, 35), the trust was for the 'heirs, executors, administrators, or assigns,' and as the sale here also did not take place until after the mortgagor's death, the same doctrine was followed. But if the sale were made in the lifetime of the mortgagor, the personal representatives of course would be entitled. The object of the mortgage security should be not to deprive the land of its character and properties as real estate. (1 Prid. Conv. 442 n.)

On sale,  
account  
should be  
rendered  
to mort-  
gagor.

On completion of the sale the mortgagee should state and send to the mortgagor an account of the produce and of the amount of the principal money, interest and expenses, and of the surplus, and name a time and place when he will pay it over to him, or as he may direct, at which time and place he should tender such balance, and if refused, or if there be no attendance, invest it in £3 per cent. consols, in the name of the mortgagor, and give him notice that such has been done. (2 Bart. Pr. 457.)

the money to be produced on the sale or demise of all or any part of the said (*parcels*), hereby assured, or intended so to be, may be paid to, or by the direction in writing of, the said (*mortgagee*), his heirs, executors, administrators, or assigns, shall not be obliged to see to the application, or be answerable for the misapplication or non-application of the same money, or any part thereof, or be required to see that any such default in payment of principal money or interest as aforesaid hath taken place, or whether any such previous notice of sale or demising as hereinafter is mentioned hath been given to the said (*mortgagor*), his heirs, executors, administrators, or assigns, or be affected with express knowledge that no such default hath taken place, or no such notice hath been given, or be obliged to enquire whether any such sale or demise be necessary for the purposes hereinbefore expressed, or whether any money be owing on this security, and that every receipt which shall be given for the said money, or any part thereof, by the said (*mortgagee*), his heirs, executors, administrators, or assigns, shall be an effectual discharge for the money which shall be therein acknowledged to have been received, and that every sale or demise which shall be made, and contract for sale or demise which shall be entered into, and conveyance or assurance which shall be executed by the said (*mortgagee*), his heirs, executors, administrators, or assigns, shall be binding and conclusive on the said (*mortgagor*), his heirs, executors, administrators, and assigns, to all intents and purposes whatsoever. Provided always (but so as not to affect any purchaser or purchasers, or lessee or lessees, under the provisions aforesaid, although he, she, or they may have clear or express knowledge that no

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FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.

Receipt of  
mortgagee  
to be good  
discharge.

Notice of  
intended  
sale or  
demise.

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III.FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.Covenants  
for title.Modes of  
computing  
months.Covenants  
for title in  
mortgages.

such notice as hereinafter is mentioned hath been given), and it is hereby declared and agreed that no such sale or demise, or notice of such sale or demise, of any of the said (*parcels*), shall be made or given by the said (*mortgagee*), his heirs, executors, administrators, or assigns, before and until he or they shall have given to the said (*mortgagor*), his heirs, executors, administrators, or assigns, or have left at his or their last and most usual place of abode in England or Wales      calendar months' (a) notice, in writing, demanding the payment of the principal money and interest due on this security, and the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall have made default in payment of the same, at the end of such      calendar months' notice. And the said (*mortgagor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his heirs and assigns, in manner following (b) (that is to say):

(a) There are in common use two ways of calculating months: either as *lunar*, consisting of twenty-eight days—the supposed revolution of the moon, thirteen of which make a year; or, as *calendar* months of unequal length, according to the Julian division in our common almanacks, commencing at the calends of each month, whereof in a year there are only twelve. By the common law, a 'month' is in matters temporal a lunar month, or twenty-eight days, unless where otherwise expressed. (1 St. Com. 292, ed. 6.) But in mortgages a month means a calendar month. (Anon. 2, Eq. C., Ab. 605, pl. 38; Dyke v. Sweeting, Willes, 585.) The practice of conveyancers, however, is to specify calendar months as well in mortgages as in other instruments. (2 Dav. Conv., 863 n.) As to the length of a calendar month, it is sufficient, when the months are broken (whatever may be the length of either), to go from one day in one month to the corresponding day in the other. (Freeman v. Read, 11 W. R., 802, per Cockburn, C. J.)

(b) The covenants for title in mortgages are always general—that is, the mortgagor is made to covenant not only against or in respect

That the said (*mortgagor*) now hath in himself good right and lawful and absolute authority by these presents to grant, convey, and confirm the said (*parcels*), hereby assured, or intended so to be, with the appurtenances, unto and to the use of the said (*mortgagee*), his heirs and assigns, for ever, according to the true intent and meaning of these presents. And also that after such default in payment of the interest of the said sum of £ , or of the same principal sum as aforesaid, and at all times thereafter (*a*), it shall be lawful for the said (*mortgagee*), his heirs and assigns, to enter into and upon, have, hold, use, occupy, possess, and enjoy the said (*parcels*), hereby assured, or intended so to be, without any lawful let, suit, trouble, eviction, ejection, expulsion, interruption, hindrance, or denial whatsoever, of, from, or by him, the said (*mortgagor*), or any other person or persons whomsoever; And freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise, by him the said (*mortgagor*), his heirs, executors, or administrators, at his and their own costs and charges, in all things well and sufficiently protected, saved harmless and

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FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLD.—  
Good right  
to convey.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

of any act done by himself or those from whom he derives his title, but also against or in respect of the acts of all other persons whomsoever, and consequently the mortgagor absolutely guarantees the title to be good without any reservation or exception whatsoever. (5 Bart. Pr., 49 n.)

(*a*) A proviso for quiet enjoyment until default was formerly invariably inserted in mortgages, but it is now rarely used. The reason for the omission is that on the expiration of the six or twelve calendar months, as the case may be, default has taken place, and the proviso ceases to operate. The covenant for quiet enjoyment in mortgages by implication also serves the same purpose, for its terms are that the mortgagee shall enjoy the premises *after* default in payment of the principal money and interest.

Proviso  
for quiet  
enjoyment.

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FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.

kept indemnified from and against all former and other gifts, grants, feoffments, mortgages, leases, bargains, sales, jointures, dower right, and title of dower, uses, trusts, wills, estates, entails, titles, troubles, liens, charges, and incumbrances whatsoever.

And likewise that the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall and will at his and their own costs and charges, within

To insure. calendar months from the date hereof, insure (a) or cause to be insured, in the name or names of the said (*mortgagee*), his heirs or assigns, in such office or offices for insurance as he or they may direct, the said messuages and buildings hereby assured, or intended so to be, with their appurtenances, in the full sum of £ , for the term of years; and so from time to time during such time as any part of the said principal sum shall be due or unpaid, shall and will in like manner insure or keep insured in the name or names of the said (*mortgagee*), his heirs or assigns, the said premises, and pay the duty and premiums on every such insurance. And, further, that in case the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall fail or neglect to make any such insurance as aforesaid, it shall be lawful for

Mortgagee  
no power  
to insure  
unless so  
authorised.

(a) If buildings are mortgaged, and the deed contains no provision enabling the mortgagee to insure, he is not entitled, except in cases coming within the operation of the statute 23 and 24 Vict., c. 145, to add to his mortgage debt, and charge upon the property the premiums which he may pay for such an insurance effected by him without the privity of the mortgagor. (*Dobson v. Land*, 8 Hare, 216; *Bellamy v. Brickenden*, 2 J. & H., 137; *Brooke v. Stone*, 34 Law J. Ch. 251., V. C. W.)

Insurance  
already  
effected.

Where the property is already insured by the mortgagor to the same amount, then such existing insurance will be sufficient compliance with the covenant.



the said (*mortgagee*), his heirs, executors, administrators, or assigns, from time to time during such time as the said principal sum, or any part thereof, shall be due on this security, to insure the said mortgaged premises in his or their name or names, in any office or offices for insurance in any sum or several sums as with the then subsisting insurance will amount to £ , for any number of years as he or they shall think proper, and that immediately after payment of any sum for insuring the said mortgaged premises, the same premises shall stand charged therewith, and be a security for the payment of the same unto the said (*mortgagee*), his heirs, executors, administrators, and assigns, and shall not be redeemable until as well the said moneys so to be paid for or on account of such insurance as aforesaid, and interest for the same after the rate of £5 per cent. per annum, as the said principal sum of money hereby secured, and the interest thereof, respectively, shall be fully paid and satisfied, and that the same may be raised or satisfied under the trusts and by the means aforesaid, and that it shall be lawful for the said (*mortgagee*), his heirs, executors, administrators, or assigns, if he or they so think fit, to apply all or any part of the moneys to be received from such insurance in or towards payment of the aforesaid principal money, interest and costs, or any part thereof, and although the same would not otherwise be then actually payable (a). And, moreover, that the said (*mortgagor*), and his heirs, and all persons whosoever, lawfully or equitably and rightfully claiming, or to claim, any estate, right, trust, title, charge, or interest at law or

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FORM 30.  
POWERS OF  
SALE AND  
DEEDS,  
AND CO-  
VENANTS—  
FREE-  
HOLDS.

Further  
assurance.

(a) Of course where there are no houses or buildings on the mortgaged premises, this covenant to insure will be omitted.

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FORM 30.  
POWERS OF  
SALE AND  
DEMISE,  
AND Co-  
VENANTS—  
FREE-  
HOLDS.

Mortgage  
exonerated  
from losses.

in equity of, in, to, out of, or upon the said (*parcels*), hereby assured, or intended so to be, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*mortgagee*), his heirs, executors, administrators, or assigns, and at the costs and charges of the said (*mortgagor*), his heirs, executors, administrators, or assigns, or of the said mortgaged premises, or the purchaser or purchasers thereof, his or their heirs or assigns, make, do, acknowledge, execute, and perfect, or cause or procure to be made, done, acknowledged, executed, and perfected, all such further and other lawful and reasonable acts, deeds, devices, conveyances, and assurances for the further better and more perfectly, lawfully, and absolutely or satisfactorily granting, conveying, confirming, or otherwise assuring the said (*parcels*) hereby assured, or intended so to be, with their appurtenances, unto and to the use of the said (*mortgagee*), his heirs and assigns for ever; subject, nevertheless, to such powers, right, benefit, and equity of redemption, and upon and with such of the trusts and powers aforesaid as from time to time shall be subsisting in and of the said premises, under and by virtue of these presents, and according to the true intent and meaning of these presents, as by the said (*mortgagee*), his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised, and required and be tendered to be made, done, and executed. Provided also, and it is hereby further agreed and declared, that the said (*mortgagee*), his heirs, executors, administrators, or assigns, shall not be answerable or accountable, under or by means of the trusts or powers aforesaid, for any other moneys

than he or they shall actually receive, nor for any misfortune, loss, or accident, in, of, or to the said trust premises and moneys, other than by or through his or their wilful act or default.

## 31.

*Powers of Sale and Covenants for Title in the case of Leaseholds.*

Provided also, and it is hereby further declared and agreed, that in case default shall be made in payment of the said sum of £ , or any part thereof, or the interest of the same, or any part thereof, for calendar months after any of the days hereinbefore appointed for payment of the same then (and although the said [*mortgagee*], his executors, administrators, or assigns, may have waived or omitted to take advantage of any such prior default in payment of interest) it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, when and as he or they may think fit, and without any further consent or concurrence of the said (*mortgagor*), his executors, administrators, or assigns, to sell and absolutely dispose of the said (*parcels*), hereby demised, or intended so to be, or any part or parts of the same, either altogether in one lot, or in parcels by several lots, and either by public auction or private contract, or partly in each such mode, and with, under, and subject to such provisions and conditions of sale as the said (*mortgagee*), his executors, administrators, or assigns, shall deem advisable or expedient, and with full power for him or them to reserve a bidding or biddings upon any such sale or sales by auction,

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FORM 30.  
POWERS OF  
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DEMISE,  
AND CO-  
VENANTS—  
LEASE-  
HOLDS.

FORM 31.  
POWERS OF  
SALE AND  
COVE-  
NANTS—  
LEASE-  
HOLDS.

Power to  
sell.

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FORM 31.  
POWERS OF  
SALE AND  
COVE-  
NANTS—  
LEASE-  
HOLDS.

Applica-  
tion of  
sale  
moneys.

and to buy in, rescind, modify, or vary the contract or contracts for sale of the said premises or any of them, and to resell the same in or by all or any of the modes or means aforesaid, without being answerable for any loss or expense to be occasioned thereby, and to deal with such contract or contracts, and the deposits or damages thereon, as he or they may think fit. And the said (*mortgagee*), his executors, administrators, or assigns, shall, or may assign the hereditaments so to be sold unto the purchaser or purchasers thereof, and his and their executors, administrators, and assigns, or as he or they may direct or appoint. And it is hereby declared and agreed that the said (*mortgagee*), his executors, administrators, or assigns, shall stand possessed of the moneys to accrue from such sale or sales as aforesaid, and also of the clear rents and profits (if any) of the said                      and premises which shall be received by him or them; upon trust from and out of the said moneys and rents, in the first place, to deduct and retain his or their costs, charges, and expenses of, and attending, making out the title to the said premises, or the execution of the powers and trusts hereby created or authorized, and the money which he or they shall disburse for the taxes or repairs of the said premises; And, in the next place, do and shall retain and pay unto and for him the said (*mortgagee*), his executors, administrators, or assigns, the said principal sum of £                      , and interest thereon from the day of the date of these presents, after the rate of £                      per cent. per annum, or so much of the same as may be unpaid, clear from all deductions as aforesaid, and pay the surplus (if any), to be raised under the powers aforesaid,

which shall remain unapplied for the purposes aforesaid, unto the said (*mortgagor*), his executors, administrators, or assigns; And also do and shall assign unto the said (*mortgagor*), his executors, administrators, or assigns, the said and premises, hereby demised, or intended so to be, or such of them as shall then remain unsold. And it is hereby agreed and declared that the person or persons by whom the money to be produced on the sale of all or any part of the said and premises hereby demised, or intended so to be, may be paid to the said (*mortgagee*), his executors, administrators, or assigns, shall not be obliged to see to the application, or be answerable for the misapplication or non-application, of the same money, or any part thereof, or be required to see that any such previous notice, as hereinafter mentioned, hath been given to the said (*mortgagor*), his executors, administrators, or assigns, or be affected with express knowledge that no such default has taken place, or no such notice hath been given, or be required to see that any such default in payment of principal money, or interest, as aforesaid, hath taken place, or whether any such sale be necessary for the purposes hereinbefore expressed, or whether any money be owing on this security, and that every receipt which shall be given for the said money, or any part thereof, by the said (*mortgagee*), his executors, administrators, or assigns, shall be an effectual discharge for the money which shall be therein acknowledged to have been received, and that every sale which shall be made, and contract for sale which shall be entered into, and assignment or assurance which shall be executed by the said (*mortgagee*), his executors, administrators,

CHAP.  
III.

FORM 81.  
POWERS OF  
SALE AND  
COVENANTS—  
LEASE—  
HOLDING.

Indemnity  
to pur-  
chasers.

CHAP.  
III.FORM 31.  
POWERS OF  
SALE AND  
COVE-  
NANTS—  
LEASE-  
HOLDS.Notice to  
be given of  
intended  
sale.Covenants  
for title.Good  
right to  
convey.

or assigns, shall be binding and conclusive on the said (*mortgagor*), to all intents and purposes whatsoever. Provided always (but so as not to affect any purchaser under the provisions aforesaid, although he may have express knowledge that no such notice hath been given), and it is hereby declared and agreed, that no sale, or notice of such sale, of any of the said                      and premises shall be made or given by the said (*mortgagee*), his executors, administrators, or assigns, before and until he or they shall have given to the said (*mortgagor*), his executors, administrators, or assigns, or have left at his or their last and most usual place of abode in England or Wales,                      calendar months' notice in writing, demanding payment of the principal money and interest due on this security, and the said (*mortgagor*), his executors, administrators, or assigns, shall have made default in payment of the same at the end of such                      calendar months' notice. And the said (*mortgagor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, in manner following (that is to say), That the said (*mortgagor*) now hath in himself good right and lawful and absolute authority by these presents to grant and demise the said                      and premises, hereby demised, or intended so to be, with the appurtenances, unto the said (*mortgagee*), his executors, administrators, and assigns, henceforth during all the now residue of the said term of                      years (except the last day thereof), according to the true intent and meaning of these presents. And also that after such default in payment of the interest on the said sum of £                      , or of the same

principal sum as aforesaid, and at all times thereafter during the said term hereby granted, it shall be lawful for the said (*mortgagee*), his executors, administrators, and assigns, to enter into and upon, have, hold, use, occupy, possess, and enjoy the said

and premises, hereby demised, or intended so to be, without any lawful let, suit, trouble, eviction, ejection, expulsion, interruption, hindrance, or denial whatsoever, of, from, or by him, the said (*mortgagor*),

or any other person or persons whomsoever; And freely, and clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise, by him the said (*mortgagor*), his heirs, executors, or administrators, at his or their own costs and charges, in all things effectually protected, saved harmless, and kept indemnified from and against all former and other gifts, grants, mortgages, leases, trusts, estates, interests, titles, troubles, liens, charges, and incumbrances whatsoever. And likewise [*Covenant to insure where considered necessary, ut ante, p. 88*]. And moreover that the said (*mortgagor*), his executors

and administrators, and all persons whosoever right-fully claiming or to claim any estate, right, title, or interest of, in, to, out of, or upon the said

and premises, hereby demised, or intended so to be, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*mortgagor*), his executors, administrators, or assigns, and at the costs and charges of the said (*mortgagor*), his heirs, executors, administrators, or assigns, or of the said mortgaged premises, or the purchaser or purchasers thereof, his or their executors, administrators, or assigns, make, do, execute, and perfect or procure to be made, done, executed, and perfected,

CHAP.  
III.

FORM 31.  
POWERS OF  
SALE AND  
COVE-  
NANTS—  
LEASE-  
HOLDS.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

Further  
assurance.

CHAP.  
III.FORM 31.  
POWERS OF  
SALE AND  
COVE-  
NANTS—  
LEASE-  
HOLDS.Indemnity  
to mort-  
gagee.

all such further and other lawful and reasonable acts, deeds, assignments, and assurances for the further better and more perfectly, lawfully, and absolutely or satisfactorily assigning, confirming, or otherwise assuring the said                      and premises, hereby demised, or intended so to be, with the appurtenances, unto the said (*mortgagee*), his executors, administrators, and assigns, thenceforth during all the then residue of the said term of                      years, granted by the said indenture of lease, and either with or without the reservation of the last day of the said term, subject, nevertheless, to such right, benefit and equity of redemption, and upon and with such of the trusts and powers aforesaid as from time to time shall be subsisting in and of the said premises under or by virtue of these presents, and according to the true intent and meaning of these presents, as by the said (*mortgagee*), his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required and be tendered to be made, done, and executed. Provided also, and it is hereby further declared and agreed, that the said (*mortgagee*), his executors, administrators, or assigns, shall not be answerable or accountable, under or by means of the trusts or powers aforesaid, for any other moneys than he or they shall actually receive, nor for any misfortune, loss, or accident of, in, or to the said trust premises and moneys, other than by or through his or their wilful act or default.



## 32.

*Power to Sell Leaseholds, either with or without the reservation of the last day of the term.*

To sell and absolutely dispose of the said messuages, pieces or parcels of ground, buildings, tenements, and premises hereby demised or intended so to be, or any part of the same, during all the then residue of the said several terms of        years,        years, and        years, and either with or without the reservation of the last day of the said terms respectively ; subject, nevertheless, in case of the sale of the whole interest in the said premises, to the several hereinbefore recited indentures of lease, and to the covenants and conditions therein respectively contained, and make such sale or sales of the said premises altogether in one lot or by parcels, &c.

CHAP.  
III.

FORM 32.  
POWER TO  
SELL WITH  
OR WITH-  
OUT LAST  
DAY OF  
TERM.

## 33.

*Power to Surrender Policy to Office [Addition to Trusts for Sale].*

And to make and effect every or any such sale by surrender of the said policy or policies respectively to the office or offices wherein the same may be effected for such price or consideration, prices or considerations, as the said (*mortgagee*), his executors, administrators, or assigns may think fit, or otherwise effect such sale or sales of the same policies, or any of them, altogether, or by lots or parcels, and by public auction or private contract, &c.

FORM 33.  
POWER TO  
SURREN-  
DER  
POLICY.

## 34.

*Proviso that Powers in Previous Mortgages may be exercised.*

CHAP.  
III.  
FORM 34.  
POWERS IN  
PRIOR  
MORT-  
GAGES.

Provided always, and it is hereby declared and agreed, that notwithstanding the powers of sale and demise hereinbefore given to the said (*mortgagee*), his heirs and assigns, it shall be lawful for him or them, in the event of any such default in payment of the said principal sum of £ , or the interest thereof as aforesaid, to resort to, or use, or exercise each or either of the powers of sale contained in the several hereinbefore recited indentures of mortgage or any of them.

## 35.

*Power to Settle Accounts with Prior Mortgagees who may exercise their powers of sale.*

FORM 35.  
POWER TO  
SETTLE  
ACCOUNTS.

Provided always, and it is hereby further declared and agreed, that in the event of any or either of the powers of sale contained in the hereinbefore recited indentures of mortgage being exercised during the continuance of this security, then it shall be lawful for the said (*mortgagee*), his heirs, executors, administrators, or assigns to settle and adjust with the person or persons who may be interested or entitled under or by means of the mortgage or mortgages, the power or powers of sale wherein may be so exercised, or with the person or persons in whom such power or powers of sale may be vested, all accounts relative thereto, or the principal moneys, interest, and costs which may be due or owing, or may or ought to be retained upon or on account of such mortgage or

mortgages, and to receive the surplus of the moneys that shall appear coming on such account, and to give effectual discharges on the settlement of all such accounts. And that it shall be lawful for the said (*mortgagee*), his heirs, executors, administrators, or assigns, from and out of all moneys which thereon may be paid to him or them, to deduct, satisfy, and pay all such principal money, interest, costs, charges, and expenses as he and they is and are authorised to retain, satisfy, and pay by virtue of these presents, or as may become payable, and that the ultimate surplus of all such moneys (if any) shall be by him or them holden upon the like trusts as far as may be, as if the sales whence the same surplus money may have arisen had been made under or by virtue of the powers of sale herein contained.

CHAP.  
III.FORM 35.  
POWER TO  
SETTLE  
ACCOUNTS.

## 36.

*Power to Obtain Payment or Transfer of Reversionary Funds in Mortgage on same falling into possession.*

Provided always, and it is hereby further declared and agreed, that in case before the payment of the said sum of £ , and the interest thereof, and the costs, charges, and expenses hereinbefore mentioned, if any such have arisen and remain unsatisfied, and before the sale of the said (*property*) hereby mortgaged, or intended so to be, under or by means of the trusts or powers aforesaid, the said (*tenant for life*) shall depart this life, it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, notwithstanding there may not have been any such default in payment as aforesaid of the said principal sum of £ , or any part thereof,

FORM 36.  
POWER AS  
TO REVER-  
SIONARY  
FUNDS.

CHAP.  
III.FORM 36.  
POWER AS  
TO REVER-  
SIONARY  
FUNDS.

or the interest of the same, or any part thereof (if he or they so think fit), to sue for, recover, receive, and obtain transfer or payment of the said (*property*) hereby mortgaged, or intended so to be, or any part thereof, and from and out of the moneys to arise or be received by such means, or by sale or conversion of the same, to retain, satisfy, and pay his or their costs, charges, or expenses, in or about recovering, receiving, or obtaining payment or transfer of the said (*property*) hereby mortgaged, or intended so to be, and from and out of the surplus of the said moneys to arise by the means aforesaid, to retain, satisfy, and pay the said principal sum of £ , and the interest thereof, or so much of the same as may remain unpaid; and as to any surplus of the moneys which may arise by the means aforesaid, and shall remain unapplied for the purposes aforesaid, and the residue (if any) of the said (*property*) hereby mortgaged, or intended so to be, which may remain unreceived, unsold, or unconverted, pay, transfer, or assign the same respectively unto the said (*mortgagor*), his executors, administrators, or assigns.

## 37.

*Trusts in Mortgage of Life Interest, where no proviso for Redemption or Power of Sale.*

FORM 37.  
TRUSTS IN  
MORTGAGE  
OF LIFE  
INTEREST.To receive  
rents and  
apply same  
in payment  
of pre-  
miums.

Upon trust that the said (*mortgagee*), his executors, administrators, or assigns (when or in case he or they so think fit), do in the meantime, and until the said principal sum of £ , and the interest thereon, and such costs, charges, and expenses as are hereby authorised to be retained or paid shall be fully satisfied, from time to time receive and obtain payment of

the said rents, issues, and profits hereby assigned, or intended so to be, and from and out of the same retain and satisfy his and their costs, charges, and expenses of and attendant upon recovering and receiving the said rents, issues, and profits, and in the next place pay all the premiums and sums of money which may be requisite for keeping up the aforesaid policy of assurance or any policies of assurance to be substituted for the same, under the provisions hereinafter contained and subject thereto (and until the said (*mortgagee*), his executors, administrators, or assigns, in consequence of the non-payment of the said principal sum of £ , or any part thereof, for , after such notice as aforesaid, or in consequence of the non-payment of the interest of the said sum, or any part thereof, for , after any of the half-yearly days hereinbefore appointed for payment of the same, shall otherwise think fit), permit and suffer the residue of the said rents, issues, and profits to be received by or pay the same residue unto the said (*mortgagor*), or his assigns, in like manner as he might have received the same in case these presents had not been executed. And upon further trust, in case of any such default in payment of principal money and interest as aforesaid, then that the said (*mortgagee*), his executors, administrators, or assigns do, if he or they so think fit, instead of paying the surplus of the said rents and profits from time to time to the said (*mortgagor*) or his assigns, thenceforth apply the same towards liquidation of the said sum of £ , and the interest thereof or therefrom form a sinking fund for the discharge of the said principal money, interest, costs, charges, and expenses aforesaid, by laying out and

CHAP.  
III.

FORM 37.  
TRUSTS IN  
MORTGAGE  
OF LIFE  
INTEREST.

In case of  
default  
to apply  
rents in  
payment of  
principal  
money and  
interest.



event of the death of either of them in the lifetime of the other of them, and during the continuance of the said sum of £ , or any part thereof, or the interest thereof, or of any part thereof, on this present security, the same sum of £ and the interest thereof, or such part of the same as from time to time shall remain unpaid, shall belong, and be payable, and paid to, the survivor of them, the said

and (*trustees*), his executors, administrators, or assigns, in exclusion of the executors or administrators of such one of them, the said and (*trustees*), as shall first depart this life, any law or usage to the contrary notwithstanding.

CHAP.  
III.

FORM 38.  
DECLARATION THAT  
MONEY IS  
ADVANCED  
JOINTLY.

### 39.

*Covenant that in the Meantime, until Failure in Payment of Mortgage Money, the Mortgagor may enjoy.*

And it is hereby declared and agreed that in the meantime, and until default shall be made in payment of the said sum of £ , or the interest thereof, contrary to the true intent and meaning of these presents and the proviso for redemption hereinbefore contained, it shall be lawful for the said (*mortgagor*), his heirs (*or* executors, administrators) and assigns, to hold, occupy, enjoy, receive, and take the rents and profits of the said (*parcels*) and premises hereby assured or intended so to be, without any let, suit, or interruption whatsoever of, from, or by the said (*mortgagee*), his heirs (*or* executors, administrators) or assigns, or of, from, or by any person or persons rightfully claiming or to claim by, from, under, or in trust for him or them, anything hereinbefore contained to the contrary notwithstanding.

FORM 39.  
QUIET EN-  
JOYMENT  
UNTIL  
DEFAULT.

## 40.

*Proviso in Mortgage for Rendering Sureties Liable as Principals.*

CHAP.  
III.  
FORM 40.  
SURETIES  
LIABLE AS  
PRINCIPALS.

Provided lastly, and it is hereby expressly understood and agreed, that each of them, the said (*mortgagor*) and (*sureties*), and his respective heirs, executors, administrators, and assigns, in respect of the covenants contained in these presents, shall and may, by and at the option of the said (*mortgagee*), his executors, administrators, or assigns, be treated, sued, or otherwise proceeded against as a principal or principals, and not as a surety or sureties; and that any time or indulgence which by or on behalf of the said (*mortgagee*), his heirs, executors, administrators, or assigns, may be given or granted unto any or either of them, the said (*mortgagor*) and (*sureties*), or their or his respective heirs, executors, administrators, or assigns, shall not in any wise prejudice, defeat, or affect all, or any, or either of the powers, rights, or remedies of the said (*mortgagee*), his heirs, executors, administrators, or assigns, under, and by means of, the covenants and provisions of these presents.

## 41.

*Covenants for Keeping on Foot Policies of Assurance on Life.*

FORM 41.  
COVENANTS  
AS TO  
POLICIES.  
Covenants  
—to keep  
up policies.

And the said (*mortgagor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he, the said (*mortgagor*), shall and will, from time to time during the continuance



of this security, continue and keep on foot the hereinbefore mentioned policies of assurance effected in the name of the said (*mortgagee*), and, at the latest,

days before the expiration of the time for payment of the yearly and other premiums which ought to be paid for the purpose of maintaining or keeping on foot the benefit of the same recited policies of assurance, pay all such premiums and sums of money respectively ; and also shall and will, on demand, deliver unto the said (*mortgagee*), his executors, administrators, or assigns, the vouchers or receipts for such payments. And also that he, the said (*mortgagor*), shall not, nor will, permit or suffer the said policies of assurance to be forfeited or vacated by reason or means of his neglect, omission, or default ; and that he, the said (*mortgagor*), hath not done, nor he, his executors or administrators, shall not, nor will, do any act by which the same policies of assurance may be vacated or discharged, or the benefit of the same cease or determine, or the right of the said (*mortgagee*), his executors, administrators, or assigns, to receive the moneys thereby secured or intended so to be, in anywise impeached, incumbered, or affected (a). And also that in case he, the said (*mortgagor*), shall omit to make any such payment for keeping up the said policies of assurance within the time hereinbefore appointed for such purpose, or shall not on demand deliver up to the said (*mortgagee*), his executors, administrators, or assigns, the vouchers

CHAP.  
III.

FORM 41.  
COVEN-  
ANTS AS TO  
POLICIES.

Not to  
allow same  
to be for-  
feited.

(a) The mortgagor should not only covenant that he will do all acts necessary for keeping the policy on foot, but also that he will do no act whereby it may be rendered void, or the money payable thereunder incapable of being received. (*Dormay v. Borradaile*, 5 C. B., 380.)

Covenants  
on mort-  
gage of  
policy.

CHAP.  
III.

FORM 41.  
COVEN-  
ANTS AS TO  
POLICIES.

On default  
of mort-  
gagor,  
mortgagee  
may renew  
policies.

Trusts of  
policy  
moneys.

or receipts for payment of the premiums for keeping up the said policies, then, and in that case, it shall be lawful for (but not imperative on) the said (*mortgagee*), his executors, administrators, or assigns, from and out of his and their own moneys, to renew the said policies of assurance, or to effect any other assurances in lieu thereof, in his or their name or names, on the life of the said (*mortgagor*), for any sum not exceeding £ , in such office or offices for assurance as he or they may think fit ; and that he, the said (*mortgagor*), shall and will, on demand, pay unto the said (*mortgagee*), his executors, administrators, or assigns, all such sum and sums of money as he or they may have paid for renewing or substituting such assurance or assurances, with interest thereon, after the rate of £5 per cent. per annum from the time or respective times of advancing the same. And, furthermore, that he, the said (*mortgagor*), shall and will, from time to time, make all payments for keeping up such renewed or substituted assurance or assurances within the like time, and in like manner, as hereinbefore mentioned by the covenant provided concerning the payments for keeping up the hereinbefore recited policies of assurance. And it is hereby declared and agreed that the said (*mortgagee*), his executors, administrators, and assigns, shall stand possessed of the hereinbefore recited policies of assurance, and of the policy or policies of assurance to be renewed and substituted as aforesaid ; and of the moneys receivable thereon, upon the trusts and for the intents and purposes hereinafter expressed and contained concerning the same, that is to say, upon trust, in case, by the death of the said (*mortgagor*) any moneys shall become payable upon, or by virtue of, such re-

spective policies of assurance, whilst the said sum of £           , and the interest thereof, or any part of the same respectively, shall remain owing on this security, that he, the said (*mortgagee*), his executors, administrators, or assigns, do and shall, if he or they so think fit, sue for, recover, and receive the moneys payable in respect of such assurance, and thereout retain, satisfy, and pay his and their charges and expenses in or about recovering or receiving the same, and also all his and their costs, charges, and expenses in or about continuing, renewing, or substituting such assurances as aforesaid, or by reason or in consequence of the non-payment of the said principal sum of £            or the interest thereof, or any part thereof, and the interest upon all sums of money to have been disbursed by the said (*mortgagee*), his executors, administrators, or assigns, in or about renewing, keeping up, or effecting such assurances as aforesaid, or in or about satisfaction and payment of such costs, charges, and expenses respectively, from the several times of making such disbursements until repayment thereof; and, in the next place, do and shall retain and take the said principal sum of £            and the interest thereof, or so much thereof as may remain unpaid, and from and after, or subject to the performance of the trusts and purposes aforesaid, or such of them as may arise or require performance, stand possessed of such respective policies of assurance and the moneys receivable thereon, or the unapplied portions thereof for the purposes aforesaid, upon trust for the said (*mortgagor*), his executors, administrators, and assigns. And it is hereby further provided, declared, and agreed that the company or companies, society or societies, person or

CHAP.  
III.

FORM 41.  
COVEN-  
ANTS AS TO  
POLICIES.

Indemnity  
to persons  
paying  
moneys to  
mortgagee.

CHAP.  
III.  
FORM 41.  
COVEN-  
ANTS AS TO  
POLICIES.

persons, by whom any moneys in respect of such assurances as aforesaid may be paid unto the said (*mortgagee*), his executors, administrators, or assigns, shall not afterwards be obliged or required to see to the application or disposition of the same, nor whether any moneys be due or owing on this security, nor be answerable or accountable for the misapplication or non-application of the same.

## 42.

*Attornment Clause (a).*

FORM 42.  
ATTORN-  
MENT.

And this Indenture further Witnesseth, that for the considerations aforesaid the said (*mortgagor*) doth hereby attorn and become tenant from year to year to the said (*mortgagee*), his heirs and assigns, for and in respect of the said                      and premises now in the occupation of him, the said (*mortgagor*), at the yearly rent of one peppercorn, until such default shall be made in payment of the said principal money and interest as hereinbefore expressed, and afterwards at the clear net yearly rent of £                      , payable half-yearly, the first payment of such rent to be made on

Attorn-  
ment  
clause.

(a) Sometimes the power of distress is conferred by means of an attornment clause in the mortgage deed itself, by which the mortgagor attorns or becomes tenant to the mortgagee, at a rent equal to the interest and payable on the same days. A mere power of distress, without attornment, is not effectual, as the mortgagor, having no estate at law, cannot create a legal rent-charge with a power of distress, and in such case the power would operate only as a licence. (*Freeman v. Edwards*, 2 Ex. R., 732.) There should be a proviso enabling the mortgagee to determine the tenancy without notice to quit. (*Doe d. Snell v. Tom*, 4 Q. B. Rep., 615.) It would seem that the introduction of an attornment clause would not subject the mortgage deed to a lease stamp (1 Prid. Conv., 481 n.)

such of the half-yearly days hereinbefore mentioned as shall occur next after any such default in payment of principal money and interest as aforesaid, but all moneys received by the said (*mortgagee*), his heirs or assigns, for rent under the attornment hereinbefore contained, shall be accepted in or towards satisfaction of the principal money and interest secured by these presents.

CHAP.  
III.  
FORM 42.  
ATTORN-  
MENT.

43.

*Covenant in Conveyance of Equity of Redemption for Payment of Mortgage Money and Interest, and indemnity therefrom.*

And the said (*grantee*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantor and mortgagor*), his executors, administrators, and assigns, that he, the said (*grantee*), his executors, administrators, or assigns, shall and will when and as the said (*mortgagee*), his executors, administrators, or assigns, so require, pay and discharge the said principal sum of £ , and the interest thereof, secured by the hereinbefore recited indenture of mortgage, and also shall and will from time to time and at all times for ever hereafter, at his and their costs and charges, indemnify, save harmless, and keep indemnified the said (*grantor and mortgagor*), his heirs, executors, administrators, and assigns, of and from all actions, suits, claims, and demands, by reason or on account of any neglect or default by or on the part of the said (*grantee*), his heirs, executors, administrators, or assigns, in the payment of the said principal sum of £ , or the interest thereof. Provided always, and notwithstanding the said covenant of the said (*grantee*), hereinbefore contained, he

FORM 43.  
COVENANT  
ON CON-  
VEYANCE  
OF EQUITY  
OF RE-  
DEMPTION.

CHAP.  
III.  
FORM 43.  
COVENANT  
ON CON-  
VEYANCE  
OF EQUITY  
OF RE-  
DEMPTION.

the said (*grantee*) doth hereby declare that the said messuages, lands, tenements, and hereditaments hereby assured, or intended so to be, shall be the primary estate or fund for payment of the said £            and interest, and that the personal estate of the said (*grantee*) shall not be bound to exonerate the same.

## CHAPTER IV.

## FORMS IN SETTLEMENTS OF PERSONAL ESTATE.

## 44.

*Introductory part of Trusts.*

AND it is hereby declared and agreed, that the said                      and (*trustees*), and the survivor of them, and the executors or administrators of such survivor and other the trustee or trustees for the time being of these presents, shall stand possessed of the said sum of £                      , £3 per cent. Consolidated Annuities, and also of the stocks, funds, and securities in or upon which the same may be invested under the powers hereinafter contained (and which said Consolidated Annuities and other the stocks, funds, and securities in or upon which the same may be invested, are intended to be hereinafter occasionally comprised under the terms, 'the said stocks, funds, and securities'), and of the dividends, interest, and income thereof. Upon the trusts and for the intents and purposes hereinafter expressed concerning the same (that is to say): Upon trust, &c.

CHAP.  
IV.  
FORM 44.  
INTRODUC-  
TORY  
TRUSTS.

## 45.

*Trusts in Settlement of Real and Personal Estate for the Benefit of Husband, Wife, and Children, and Issue of Marriage.*CHAP.  
IV.FORM 45.  
TRUSTS OF  
REAL AND  
PERSONAL  
ESTATE.Declara-  
tion of  
trusts.To pay  
rents and  
income to  
intended  
wife for  
life.

And it is hereby declared and agreed that the said and (trustees), and the survivor of them, his heirs, executors, and administrators, and other the trustee or trustees to succeed or be appointed in his or either of their stead, shall stand and be seised and possessed of all and singular the freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments, and real and personal estates, which under, or by means of these presents, are or may be vested in him or them (and all which are intended to be hereinafter occasionally designated as 'the real and personal property hereby settled'), upon the trusts for the intents and purposes, and with, under, and subject to the powers and provisions hereinafter expressed and contained concerning the same (that is to say): Upon trust that the said trustee or trustees, for the time being, do and shall, from time to time, pay the rents, profits, dividends, interest, and income of the said real and personal property hereby settled, to accrue due during the lifetime of the said (*intended wife*), unto such person or persons, and for such intents and purposes as she, from time to time, by any note or writing under her hand, notwithstanding her coverture, and as well when covert as sole, shall appoint, and in default of such appointment then into her own hands, for her own sole use, separate and apart from the said (*intended husband*), and without being



in any manner under his control, or subject to his debts, contracts, forfeitures, or engagements, and so that the receipts of the said (*intended wife*), or her appointees for the same, may, notwithstanding her coverture, be effectual discharges. And from and after the decease of the said (*intended wife*), then, upon trust, that the said trustee or trustees do pay the rents, profits, dividends, interest, and income of the said real and personal property hereby settled unto the said (*intended husband*) during his life, provided he survive the said \_\_\_\_\_, his intended wife, and shall not in his lifetime have committed any act of bankruptcy on which he shall be adjudicated bankrupt, and which adjudication shall not have been set aside, and provided any judgment shall not have been registered against him which shall not have been satisfied or discharged in the lifetime of the said (*intended wife*), and provided that he shall not have done any act which, but for the effect or operation of this clause, would have been an assignment, charge, incumbrance, or interruption of the said rents, issues and profits, interest, dividends, and annual income, or any part thereof, or until subsequently to the decease of the said (*intended wife*), the said (*intended husband*) shall be so adjudicated bankrupt, and the adjudication shall not be set aside within three months afterwards, or until any such subsequent act, deed, matter, or thing, as aforesaid, shall subsequently have been done, made, or taken place which should divest or pass away all or any portion of the life interest of the said (*intended husband*) for the privation of the said provision (a),

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IV.

FORM 45.  
TRUSTS OF  
REAL AND  
PERSONAL  
ESTATE.

Then to intended husband for life determinable on bankruptcy or alienation.

(a) A provision for determining the life interest of the husband on bankruptcy or alienation is only valid in the case of property

CHAP.  
IV.FORM 45.  
TRUSTS OF  
REAL AND  
PERSONAL  
ESTATE.

After death  
of survivor  
upon trusts  
for chil-  
dren and  
issue of  
intended  
marriage.

As in-  
tended  
husband  
and wife  
shall  
jointly  
appoint.

and from and immediately after the decease of the survivor of them, the said (*intended husband*) and his intended wife, or from and after the decease of the said (*intended wife*), and any such cesser or determination of the life interest of the said (*intended husband*), then the said trustee, or trustees for the time being, do and shall stand seised and possessed of the said real and personal property hereby settled, and of the rents, issues, dividends, interest, and income thereof, thenceforth to become due, upon trust, for the child, grandchild, or other issue, or all or any one or more of the children, grandchildren, or other issue of the said intended marriage (such grandchildren, and issue of the said (*intended husband*) and his intended wife respectively, to be born in the lifetime of the said (*intended husband*) and his intended wife, or one of them), for such estate or interest, estates or interests, in such manner and form, and if more than one, in such parts, shares, and proportions, and for such times, with such limitations over, or substitutions in favour of any one or more of the others of the said children, grandchildren, and issue respectively, and either by way of legacy, portion, present, or remote interest, or otherwise, and to vest and be payable, and paid, transferred, and assigned, at such event, day, or time, events, days, or times, upon such contingencies, and under and subject to such directions and regulations, for maintenance, education, and advancement, and such conditions and restrictions as the said (*intended husband*) and his intended wife at any time or times, and from time to time, during their joint settled belonging to the wife. (Ex parte Murphy, 1 Sch. & Lef., 44 ; Ex parte Henecy, cited, Ib., 46 ; Ex parte Cooke, 8 Ves. J., 353 ; Higinbotham v. Holme, 19 Ves., 88, see p. 92 ; Stephens v. James, 4 Sim., 499.)

lives, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them in the presence of, and to be attested by two or more credible witnesses, shall, either absolutely or with or without power of revocation and new appointment (such new appointment to be in favour of some one or more of the objects of this present provision), jointly direct, limit, or appoint, and in default of, and subject to, every or any such direction, limitation, and appointment by the said (*intended husband*) and his intended wife jointly, as aforesaid, then, as the survivor of the said (*intended husband*) and his intended wife, at any time or times after the death of the other of them, and as to the said (*intended wife*), notwithstanding her coverture by any future husband, by any deed or deeds, instrument or instruments, in writing, with or without power of revocation and new appointment (such new appointment to be in favour of some one or more of the objects of this present provision), to be sealed and delivered by such survivor in the presence of, and to be attested by two or more credible witnesses, or by his or her last will and testament in writing, or any writing in the nature of, or purporting to be, his or her last will and testament, or any codicil or codicils thereto, shall direct, limit, or appoint, and for want of, and subject to, every or any such direction or appointment by the said (*intended husband*) and his intended wife, and the survivor of them: then the said trustee or trustees shall stand seised and possessed of the said real and personal property hereby settled, and the rents, profits, dividends, interest, and income of the same, which shall become due after the decease of the survivor of the said (*intended husband*) and his intended wife, or the decease of the said (*intended*

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IV.

FORM 45.  
TRUSTS OF  
REAL AND  
PERSONAL  
ESTATE.

In default  
as survivor  
shall by  
deed or  
will  
appoint.

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IV.

FORM 45.  
TRUSTS OF  
REAL AND  
PERSONAL  
ESTATE.  
In default  
upon trust  
for chil-  
dren  
attaining  
21 or  
marriage.

*wife*) and the determination or cesser of the said life interest of the said (*intended husband*), upon trust for the child or children of the said intended marriage of the said (*intended husband*) and his intended wife, who, being a son or sons respectively, shall attain the age of twenty-one years, or die under that age, leaving surviving issue, or being a daughter or daughters respectively, shall attain that age, or be married, and equally between or among such children, if more than one, and his, her, or their respective heirs, executors, administrators, and assigns; and in case there shall not be any child of the said intended marriage of the said (*intended husband*) and his intended wife, who, being a son, shall attain the age of twenty-one years, or die under that age, leaving surviving issue, or being a daughter, shall attain that age, or be married, then, in case the said (*intended husband*) shall die in the lifetime of the said , his intended wife, upon trust, for the said (*intended wife*), her heirs, executors, administrators, or assigns, but in case the said (*intended wife*) die in the lifetime of the said (*intended husband*), then, upon trust, for such person or persons, for such estate or interest, estates or interests, or intents and purposes, and in such manner and form as the said (*intended wife*), notwithstanding her coverture, and as well before as after such failure of issue as aforesaid, by her last will and testament, or any writing in the nature of, or purporting to be, her last will and testament, or any codicil or codicils thereto, shall direct or appoint, and in default of any such direction or appointment, as last aforesaid, upon trust for the said (*intended husband*), his heirs, executors, administrators, and assigns, and upon and for no other trust, intent, or purpose, whatsoever.

In default  
of children  
upon trust  
for in-  
tended  
wife or  
according  
to her ap-  
pointment.

In default  
of such ap-  
pointment  
upon trust  
for in-  
tended  
husband.

## 46.

*Power to Invest Trust Monies in the Funds or on Mortgage.*

Provided always, and it is hereby declared and agreed, that it shall be lawful for the trustee or trustees, for the time being, of these presents, from time to time, by the direction, or with the consent or approbation in writing, of the said

and *(intended husband and wife)*, or the survivor of them, and after the decease of the said and *(intended husband and*

*wife)*, then in the discretion of the said trustee or trustees to sell and dispose of all, or any part of, the said sum of £ , £3 per cent. Consolidated Annuities, and with such consent or approbation, or in such discretion as aforesaid, to lay out and invest the moneys arising from every such sale, disposition, or conversion, as aforesaid, in the name or names of the said trustee or trustees, in or upon the Government or Parliamentary stocks or funds of Great Britain, or at interest on the security of any freehold, copyhold, or customary, or leasehold hereditaments in England or Wales, but not in Ireland, such leasehold property being holden for an unexpired term of years at the least, and from time to time with such consent or approbation, or in such discretion, as aforesaid, to alter, vary, and transpose (a) the said stocks, funds, and securities, into or upon any other stocks, funds, or

CHAP.  
IV.

FORM 46.  
POWER TO  
INVEST  
TRUST  
MONIES.

(a) It seems desirable that the power to vary the securities should be placed under the control of the tenant for life, or other person entitled to the immediate income, as such person is the one whose

Under  
whose con-  
trol power  
to vary

CHAP.  
IV.FORM 46.  
POWER TO  
INVEST  
TRUST  
MONETIES.

securities  
should be  
placed.

Powers of  
investment  
to be given  
to trustees.

Statutory  
powers of  
invest-  
ment.

securities of the like nature, as opportunity may present, or occasion shall require (a).

interest is most directly involved in its due and impartial exercise. (Hayes & Jarman, Wills, 225 n.)

(a) Some practitioners are in favour of giving to trustees the widest and fullest powers of investment, trusting to their discretion and relying on their judgment to exercise them with care and fidelity. But others think it desirable to restrict the power within very narrow limits, on the ground that such a restriction is the best protection to trustees against the importunities of their *cestuis que trust* to make improvident investments. It is suggested that the best plan will be to adopt the mean between these two opposite courses, and to arm the trustees with adequate though not extensive powers of investment. (2 Prid. Conv., 188 n.)

Trustees may now by statutory authority, where not expressly forbidden by the instrument creating the trust, invest any trust fund on real securities in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India Stock. (22 & 23 Vict. c. 35, s. 32.) This power is made retrospective (23 & 24 Vict. c. 38, s. 12.), and extended to the new East India Stock (30 & 31 Vict. c. 132, s. 1.), or any securities the interest of which is guaranteed by Parliament. (Ibid, s. 2.) There is also a power given by the Trustees and Mortgagees Act (23 & 24 Vict. c. 145, s. 25), for trustees, with the consent in writing of the tenant for life, to invest money in their hands, or called in by them for such purpose, in any of the Parliamentary stocks or public funds, or in Government securities. This authority, it will be observed, is more restrictive than that conferred by the previous Act, but it does not, even by implication, take away the more extended power of investment. Where trustees have power to invest their trust funds upon Government securities or upon Parliamentary stocks, funds, or securities, they may invest such trust funds in any of the stocks, funds, or securities in or upon which cash, under the control of the Court of Chancery, may by general order be invested. (23 & 24 Vict. c. 38, s. 11.) These securities are Bank Stock, East India Stock, Exchequer Bills, £2 10s. per cent. Annuities; Consolidated £3 per cent. Annuities, Reduced £3 per cent. Annuities, and New £3 per cent. Annuities, and also mortgages of freehold and copyhold estates respectively in England and Wales. (Order 1 Feb., 1861.)

## 47.

*Power to Invest Trust Moneys in the Purchase of  
Land (a).*

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the said trustee or trustees for the time being, and he and they is and are hereby required, at the request, in writing, of the said (*intended husband and wife*), or the survivor of them, to lay out and invest the produce of all or any of the said stocks, funds, and securities, for the time being, subject to the provisions of these presents, or the produce of the sale of any hereditaments, to be purchased under the provision hereinafter contained, in the purchase of freehold or copyhold messuages, lands, and tenements in England or Wales, holden either in fee simple, or any messuages, lands, and tenements holden for any long and absolute term of years, of which        years at least shall at the time of such purchase remain unexpired, and also upon such request as aforesaid, to convert such messuages, lands, and tenements into money by a sale thereof, and stand and be possessed of the money arising

CHAP.  
IV.FORM 47.  
INVEST-  
MENT IN  
LAND.

(a) A power to invest the trust moneys in the purchase of land is not as a matter of course inserted in settlements like the ordinary powers to vary securities and change trustees. It has been suggested, however, that it would be convenient if such a power were more generally given, as the want of it sometimes precludes the opportunity of an advantageous investment, or renders trustees who are rash enough to purchase land without such authority liable to the risk of being obliged to take the purchase on themselves, if it should turn out unfavourably. Sometimes, indeed, where there is no power to invest in land, the husband makes the purchase and mortgages the property to the trustees who advance the purchase money. (9 Byth. and Jarm., 167 n., 1st ed.)

Power to  
invest in  
the pur-  
chase of  
land.

CHAP.  
IV.  
FORM 47.  
INVEST-  
MENT IN  
LAND.

from such sale upon the same, or the like trusts as are declared of the money which shall be invested in the purchase of the messuages, lands, and tenements so purchased from time to time, and the said trustee or trustees shall from time to time until such sale make such leases of the messuages, lands, and tenements, at full improved rents for any term or number of years, not exceeding twenty-one years in possession, as the said                      and  
(*intended husband and wife*), or the survivor of them, shall require, and after the death of the survivor of the said                      and                      (*intended husband and wife*), as the said trustee or trustees for the time being shall think fit; and also in the meantime, until such sale do and shall apply the rents and income of the said messuages, lands, and tenements to be so purchased in the same manner and for the benefit of the same persons, and in the same proportions as the interest of the money to be invested in such purchases of the said messuages, lands, and tenements respectively, would have been applicable under the provisions of these presents in case such purchases had not been made, and in all other respects stand and be seised of or interested in the messuages, lands, and tenements to be purchased from time to time as aforesaid, upon or subject to the same trusts as if the same were personal estate, and so and in such manner that on a sale of the said messuages, lands, and tenements, or any of them, the person or persons who shall have become the purchaser or purchasers of the same shall not be under any obligation to see to the application of the purchase money, or be answerable or accountable for the misapplication or non-application thereof, after payment of such money



to the trustee or trustees, for the time being, of these presents, and taking his or their receipt for the same.

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IV.

FORM 47.  
INVEST-  
MENT IN  
LAND.

48.

*Maintenance and Advancement Clause (a).*

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the said trustee or trustees, at any time or times after the death of the said                      and                      (*intended husband and wife*), to apply the interest, dividends, and annual income of the contingent or presumptive share of each of the children of the said intended marriage, of and in the said trust moneys, stocks, funds, and securities in or towards his or her maintenance, education, and advancement, and also in or towards his or her schooling, pocket-money, and clothing. And, further, that so much of the interest, dividends, and annual income arising from the portion or share of each of the same children as shall not be applied

FORM 48.  
MAINTEN-  
ANCE AND  
ADVANCE-  
MENT.  
Mainten-  
ance.

(a) In all cases where any property is held by trustees in trust for an infant, either absolutely or contingently, they are now empowered at their discretion to pay to the guardians (if any) of such infant, or otherwise to apply for or towards his or her maintenance or education the whole or any part of the income to which such infant may be entitled, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not; and the trustees are to accumulate the residue of the income by way of compound interest by investing the same, and the resulting income thereof from time to time in proper securities for the benefit of the person ultimately entitled to the property from which such accumulations shall have arisen; and the trustees may at any time, if it shall appear to them expedient, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year. (23 & 24 Vict. c. 145, s. 26.)

Mainten-  
ance power  
by statute.



49.

*Proviso that Receipts of Trustees shall be Good Discharges (a).*

Provided always, and it is hereby declared and agreed, that the person or persons by whom all or any of the moneys, for the time being, subject to the trusts or provisions of these presents, may be paid to the trustee or trustees, for the time being, of this settlement, shall not be bound to see to the application, or be answerable for the misapplication or non-application of the same money, or any part thereof, by him or them, and that every receipt which shall be given for the said moneys, or any part thereof, or the interest, dividends, and income of the same money, or any part thereof, by the person or persons who, for the time being, shall be the acting trustee or trustees under this settlement, shall be an effectual discharge for the money therein expressed to have been received.

CHAP.  
IV.  
FORM 49.  
PROVISO  
AS TO  
RECEIPTS.

50.

*Power to Appoint New Trustees ; Indemnity and Reimbursement (b).*

Provided also, and it is hereby declared and agreed, that if any or either of the trustees hereby appointed

FORM 50.  
POWER TO  
APPOINT  
NEW  
TRUSTEES.  
Statutory  
power to  
give  
receipts.  
Number of  
trustees.

(a) A statutory power authorising trustees to give receipts for any money payable to them is now conferred by two Acts (22 & 23 Vict. c. 35, s. 23, and 23 & 24 Vict. c. 145, s. 29).

(b) Two trustees are very commonly appointed of a marriage settlement, but sometimes the number is three or four. The Bank of England will not, as a general rule, allow stock to be invested in the name of more than four persons. (3 Dav. Conv., 534 n.)

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IV.

FORM 50.  
POWER TO  
APPOINT  
NEW  
TRUSTEES.  
Power to  
appoint.

or to be appointed, as hereinafter is mentioned, shall die, or refuse, or decline, or become incapable to act in the trusts hereby created, then in any such case it shall be lawful for the said (*intended wife*) during her life, and after her decease, for the said (*intended husband*) during his life, and after the decease of the said                      and                      (*intended wife and husband*), or in case of her or his default for one calendar month after being thereunto required, in writing, by the surviving or continuing trustee, or the last acting trustee, his executors or administrators, then for the surviving or continuing trustee, or the last acting trustee, his executors or administrators, to appoint one or more trustee or trustees in the room of the trustee or trustees so dying, refusing, declining, or becoming incapable to act, and thereupon the said trust estate, moneys, and premises shall be vested in the same trustee or trustees, solely, or jointly with the surviving or continuing trustee, as occasion shall require, and that such new trustee or trustees, as well before as after any act or assurance for so vesting the said trust property, shall have the same powers and authorities

Statutory  
power to  
appoint  
new  
trustees.

A power to appoint new trustees is now conferred by the Trustees and Mortgagees Act (23 & 24 Vict. c. 145, ss. 27, 28), about the same in extent and operation as that usually inserted in deeds and wills. The power is given to the person or persons nominated for that purpose by the deed or will; or if there be no such person, or no such person able and willing to act, then to the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or to the last retiring trustee. The usual clause of indemnity is supplied by the 31st sect. of the Act to Amend the Law of Property. (22 & 23 Vict. c. 35.) A learned author thinks that in ordinary cases the statutory power to appoint new trustees may be safely relied upon. (2 Prid., 190 n.)

Indemnity  
clause.

for all intents and purposes whatsoever as if he or they had been originally nominated a trustee or trustees in these presents. Provided also; and it is hereby further declared and agreed, that the trustees hereby appointed or to be appointed, as hereinbefore is mentioned, shall not be answerable the one for the other of them, nor for signing receipts for the sake of conformity, nor for any involuntary loss. And that it shall be lawful for them to reimburse themselves their costs and expenses in discharging the trusts hereby created.

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IV.

FORM 50.  
POWER TO  
APPOINT  
NEW  
TRUSTEES.  
Indemnity.

## 51.

*Proviso that Trustee being Solicitor may make all Usual and Accustomed Charges.*

Provided, lastly, and it is hereby declared and agreed, that it shall be lawful for the said (*solicitor*) from time to time, and at all times hereafter, notwithstanding his being a trustee of these presents, to make all usual and accustomed charges, as an attorney or solicitor, for all trouble, attendances, matters, and things already or hereafter to be taken, had, made, or done in or about the preparation or execution of these presents, or in or about the exercise of the powers or trusts hereinbefore contained, or in anywise relating thereto.

FORM 51.  
SOLICITOR  
TO MAKE  
USUAL  
CHARGES.

## 52.

*Clause to bring Advancement into Hotchpot.*

Provided also, and it is hereby declared and agreed, that no child or other issue of the said intended marriage taking any part of the said trust moneys, stocks, funds, or securities, under any such appointment as aforesaid, shall, as against his or her brother or sister,

FORM 52.  
HOTCHPOT  
CLAUSE.

CHAP.  
IV.  
FORM 52.  
HOTCHPOT  
CLAUSE.

brothers or sisters, be entitled to any further part or share of the unappointed parts of the same trust moneys, stocks, funds, and securities, or any part thereof, without bringing the appointed part or share into hotchpot, and making an allowance for the same.

## 53.

*Proviso for Cesser of Life Interest of Husband in Property of Intended Wife, on Bankruptcy or Alienation.*

FORM 53.  
CESSER OF  
HUSBAND'S  
LIFE  
INTEREST.

Provided always, and it is hereby declared and agreed, that in case the said (*intended husband*), at any time during the lifetime of the said (*intended wife*), or after her decease, and whilst there shall be any issue of the said intended marriage, who hath attained or can attain a vested or indefeasible interest under the trusts aforesaid, shall commit any act of bankruptcy on which he shall be adjudicated bankrupt, or shall do any act which, but for the effect of this provision, would be an assignment, charge, incumbrance, or anticipation of or upon all or any portion of the dividends, interest, and income of the said stocks, funds, and securities, or any judgment, decree, or Crown debt, shall be registered against him, which shall not be satisfied within three calendar months after registry thereof, then and in any such case the right of the said (*intended husband*) to receive the said dividends, interest, and income of the said stocks, funds, or securities under the trusts aforesaid shall cease and determine as if he were actually dead, but so always that notwithstanding he may concur in or consent to the exercise of the several powers herein contained in like manner as if his said life interest had not so determined.

## 54.

*Agreement that Personal Property of Wife not Reduced into Possession shall become Property of Husband.*

Now this Indenture Witnesseth, and it is hereby declared and agreed, and in particular the said (*intended wife*) doth hereby consent that all the money and securities for money and other personal property of the said (*intended wife*) (other than and except the said sum of £ , capital stock) shall immediately, after the solemnisation of the said intended marriage, become and be the absolute property of the said (*intended husband*), notwithstanding his death in the lifetime of the said (*intended wife*), or before he shall have obtained the actual possession of the same articles respectively.

CHAP.  
IV.  
FORM 54.  
AGREEMENT AS TO  
PERSONAL  
PROPERTY  
OF WIFE.

## 55.

*Power of Revocation and New Appointment.*

Provided also, and it is hereby lastly declared and agreed, that it shall be lawful for the said (*settlor*) at any time or times hereafter, by any deed or instrument in writing, whether testamentary or operating in his lifetime, absolutely to revoke, determine, and make void all or any of the trusts, powers, and provisions hereinbefore expressed concerning the said property and effects hereby settled, or intended so to be, and by the same or any other deed or instrument in writing, to declare, direct, or appoint any such new or other trust or trusts of the property, the trusts of which shall be so revoked as the said (*settlor*) shall think expedient to declare, direct, or appoint, anything hereinbefore contained to the contrary notwithstanding.

FORM 55.  
REVOCA-  
TION AND  
NEW AP-  
POINT-  
MENT.

## 56.

*Power enabling Wife to Appoint Sums in Favour of Children of Marriage.*

CHAP.  
IV.  
FORM 56.  
POWER TO  
WIFE TO  
APPOINT IN  
FAVOUR OF  
CHILDREN.

Provided always, and it is hereby declared and agreed, that it shall be lawful for the said (*intended wife*), by any deed or instrument in writing, to be attested by two or more credible witnesses, or by her last will and testament, or any codicil thereto, to direct or appoint that any sum or sums of money, not exceeding in the whole £       , shall be raised out of the said trust moneys, stocks, funds, and securities, for the benefit of any child or children of the said intended marriage, who at the time of such direction or appointment, being a son or sons, shall be of the age of        years at least, or being a daughter or daughters shall be of the age of        years or upwards, or married, and that such sum or sums shall be raised at the time or times directed, and paid to the child or children respectively to whom the said (*intended wife*) shall appoint the same, discharged from all the trusts hereinbefore declared thereof, and that the sum or sums so to be appointed shall not exclude the child or children to whom such appointment shall be made from a full original share of the residue of the said trust moneys, stocks, funds, and securities.

## 57.

*Power for Trustees to Advance Husband Trust Moneys for his Use in Trade.*

FORM 57.  
TRUST  
MONEYS  
FOR USE IN  
TRADE.

Provided always, and it is hereby declared and agreed, that from time to time during so long as the



said (*intended husband*) shall continue in trade, it shall be lawful for the trustee or trustees for the time being of these presents, and he and they is and are hereby authorised and also required upon the request of the said (*intended husband*) to advance and lend to the said (*intended husband*) all or any part of the said sum of £       , or of the produce of the stocks, funds, and securities upon which that sum shall from time to time be invested, upon the security of the bond of him the said (*intended husband*), payable on demand without interest and without any responsibility by or on the part of the said trustee or trustees for any loss of the said trust moneys, or any part thereof, which may happen by advancing the same to the said (*intended husband*), and without any discretion in them, the said trustee or trustees, to withhold the loan of the said money from the said (*intended husband*), or to enforce payment thereof either at law or in equity against the will of the said (*intended husband*), so long as he shall continue in trade, and with an option to the said (*intended husband*) to pay in the said money from time to time when he shall think fit, and to have the same again advanced to him on his request as aforesaid. And further, that the money which from time to time shall be advanced or lent to the said (*intended husband*), and the securities which shall be taken for the same money, shall be held upon the trusts hereinbefore expressed, concerning the said sum of £       , and the stocks, funds, and securities upon which that sum is directed to be invested; but nothing hereinbefore contained shall affect or prejudice the right of the said trustee or trustees to receive a dividend in respect of such part (if any) of the said trust moneys as shall be in the hands of the said

CHAP.  
IV.  
FORM 57.  
TRUST  
MONEYS  
FOR USE IN  
TRADE.

CHAP.  
IV.FORM 57.  
TRUST  
MONEYS  
FOR USE IN  
TRADE.

(*intended husband*), when, and if he shall become bankrupt, and there shall be a distribution of the produce of his effects among his creditors.

## 58.

*Power enabling Husband to require Trust Moneys to be Advanced to him on Security of Mortgage.*

FORM 58.  
MONEY ON  
SECURITY  
OF MORT-  
GAGE.

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the said (*intended husband*) at any time, and from time to time during his life, to require all or any part of the said sum of £      , or of the produce of the stocks, funds, and securities on which the same shall be invested, to be advanced to him on the security of mortgage of freehold or copyhold estates in fee simple, or leasehold estates held for terms, of which sixty years at least shall remain unexpired, and of a good title, and so that not more than two-thirds as regards lands, and one-half as regards houses in value, shall be lent on the security of the same, and so that interest on such advance or advances be reserved at the rate of £5 per cent. per annum. And it is hereby declared and agreed, that the sum and sums of money which from time to time shall be lent or advanced to the said (*intended husband*) under the provision aforesaid, and the securities which shall be taken for the same, shall be held upon the trusts hereinbefore expressed concerning the said sum of £      , and the stocks, funds, and securities upon which the same is directed to be invested.

59.

*Proviso giving Lady Power to Appoint in Favour of Children of any Future Marriage in Certain Events.*

Provided always, and it is hereby further declared and agreed, that in case the said (*intended wife*) survive the said \_\_\_\_\_, her intended husband, and at his death there shall be any child or children of the said intended marriage who can acquire, but shall not have acquired, an absolute and indefeasible interest under the trusts hereinbefore contained, then, in any such case it shall be lawful for the said (*intended wife*) at any time, or times, or from time to time, after the decease of the said (*intended husband*), and either previously or subsequently to her marriage with any future husband, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be sealed and delivered by her in the presence of, and attested by, one or more credible witness or witnesses, or by her last will and testament, or any writing or writings in the nature of, or purporting to be, her last will and testament, or any codicil or codicils thereto, to limit or appoint any portion not exceeding one-half part of the amount or value of the said trust moneys, or property hereinbefore settled, or intended so to be, unto or for the benefit of her child or children, grandchild, grandchildren, or issue by every or any future marriage, in such manner as she may think fit.

CHAP.  
IV.  
FORM 59.  
APPOINT-  
MENT IN  
FAVOUR OF  
CHILDREN  
OF FUTURE  
MARRIAGE.

## 60.

*Covenant to Keep the Benefit of Policy of Insurance on Foot, and Pay the Premium thereon.*

CHAP.  
IV.  
FORM 60.  
COVENANT  
TO KEEP UP  
POLICY.

And he, the said (*settlor*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said                      and (*trustees*), their executors and administrators, that he, the said (*settlor*), shall and will, from time to time, during his natural life, continue and keep on foot the benefit of the said policy of insurance, and pay the yearly or other premiums which ought to be paid for the purpose of maintaining and keeping on foot the benefit of the same policy, and shall not nor will permit or suffer the same policy of insurance to be forfeited or vacated by reason or means of his or their neglect, omission, or default, and shall not nor will do any act by which the same policy of insurance may be released or discharged, or the benefit of the same cease or determine, or the right of the said trustee or trustees to receive the sum and sums of money thereby secured, or to be added thereto by way of bonus or otherwise, be affected, impeached, interrupted, or encumbered.

## 61.

*Covenant by Intended Husband to Settle Sum of Money.*

FORM 61.  
COVENANT  
TO SETTLE  
MONEY.

And this Indenture further Witnesseth, that in pursuance of the said agreement in such behalf, and in consideration of the said intended marriage, he, the said (*intended husband*), doth hereby, for himself, his heirs, executors, and administrators, covenant with the said                      and (*trustees*), their

executors and administrators, that, in case the said intended marriage shall be solemnised, and he, the said (*intended husband*), shall die, in the lifetime of the said (*intended wife*), or in case she shall predecease him, but there shall be any child of the said intended marriage living at his decease, or any child of the said intended marriage shall, in his lifetime, have acquired an absolute and indefeasible interest under the trusts hereinbefore declared concerning the property of the said (*intended wife*), then, and in any such case, the heirs, executors, or administrators of the said (*intended husband*) shall, within six calendar months after his decease, pay unto the trustee or trustees, for the time being, of these presents the clear sum of £                      sterling, with the intent, as it is hereby declared, that the same sum shall, with the consent, in writing, of the said (*intended wife*), or if she be dead, or after her decease, then, in the discretion of the said trustee or trustees, be laid out or invested at interest in the name or names of the said trustee or trustees, in or upon some of the Government or Parliamentary stocks or funds of Great Britain, or real securities in England or Wales, but not in Ireland, to be from time to time varied or transposed with such consent, or in such discretion, as aforesaid, into or for other stocks, funds, or securities of the like nature as opportunity may present or occasion shall require, and that the said trust moneys, stocks, funds, and securities, and the dividends, interest, and income of the same shall be holden upon the trusts and for the intents and purposes hereinafter expressed concerning the same, or such of them as may be subsisting or capable of taking effect (that is to say), Upon trust, to pay

CHAP.  
IV.

FORM 61.  
COVENANT  
TO SETTLE  
MONEY.

Covenant  
to pay sum  
of money.

Which is  
to be  
invested.

Dividends  
to be paid  
to intended  
wife.

CHAP.  
IV.FORM 61.  
COVENANT  
TO SETTLE  
MONEY.Corpus of  
fund for  
children.If no  
children  
for the  
settlor.

the dividends, interest, and income of the same unto the said (*intended wife*) during her natural life, and after her decease, then to hold the said trust moneys, stocks, funds, and securities, and the dividends, interest, and income thereof, upon trust for the child, if only one, or if more than one, all the children of the said intended marriage, who respectively, being a son or sons, shall attain, or have attained, the age of twenty-one years, or die or have died under that age, leaving surviving issue, or being a daughter or daughters, shall attain, or have attained, that age, or be, or have been married, and equally among such children, if more than one, and his, her, or their executors, administrators, or assigns, and so that every or any such child attaining such age, day, or time, in the lifetime of the said (*intended husband*), although afterwards predeceasing him, shall, nevertheless, be considered to have acquired an absolute and indefeasible interest under the trusts hereby lastly declared; but in case there shall not be any child of the said intended marriage who, being a son, shall attain, or have attained, the age of twenty-one years, or die, or have died under that age, leaving surviving issue, or being a daughter, shall attain, or have attained, that age, or be, or have been married, then, from and after the decease of the said (*intended wife*), and such failure or default of issue, as aforesaid, the said trustee or trustees shall stand possessed of the said trust moneys, stocks, funds, and securities, and the dividends, interest, and income thereof, subsequently to become due, upon trust for the executors, administrators, or assigns of the said (*intended husband*), and as part of his personal estate.

## 62.

*Covenant in Marriage Settlement to Settle After-acquired  
Personalty.*

And this Indenture further Witnesseth that in pursuance of the said recited agreement in such behalf, and in consideration of the said intended marriage, they, the said (*intended husband and wife*), for themselves respectively, and their respective heirs, executors, and administrators, do hereby covenant with the said (*trustees*), their executors and administrators, that all the personal estate, property, and effects whatsoever of which the said (*intended husband and wife*), or either of them in her right, shall at any time or times during the continuance of the said intended coverture become possessed, or to which they or either of them, in her right, shall become entitled, whether at law or in equity, under any gift or bequest in her favour or by representation, or by any other means whatsoever shall be assured and settled, and that the said (*intended husband and wife*) respectively shall do, execute, and concur in doing and executing, all such acts and deeds whatsoever as to the trustee or trustees for the time being of these presents, or his or their counsel in the law, shall be reasonably advised and required for assuring and settling the same, and every part thereof, for all the estate or interest of the said (*intended husband and wife*), or either of them therein upon the same trusts, and subject to the same powers and provisoes as are herein expressed, concerning the said funds and premises hereby settled, or such of the said trusts, powers, and provisoes as shall then be subsisting, or

CHAP.  
IV.  
FORM 62.  
COVENANT  
TO SETTLE  
PERSON-  
ALTY.  
Covenant  
to settle.

CHAP.  
IV.  
FORM 62  
COVENANT  
TO SETTLE  
PERSON-  
ALTY.

Not to ex-  
tend to  
property of  
small  
value.

capable of being executed, or as near thereto as the nature of the property and other circumstances will admit; and that until the said estate, property, and effects shall be so settled and assured as aforesaid, the same shall be subject to such trusts, powers, and provisoes as aforesaid, and shall be enjoyed accordingly. Provided always, that the covenant lastly hereinbefore contained shall not extend to any legacy, share, or interest of less amount or value than £50, nor shall the same apply or extend to any jewels or trinkets which may be bequeathed to or otherwise become vested in the said (*intended wife*) during the said intended coverture. And further, that in case the said (*intended wife*), during such coverture, shall become entitled to any annuity or determinable interest, the same, or the annual income arising therefrom, shall for all the purposes of these presents be deemed and considered to be annual income and not in the nature of capital or principal.

## 63.

*Covenant to Settle After-acquired Real and Personal Estate of Intended Wife.*

FORM 63.  
COVENANT  
TO SETTLE  
REAL AND  
PERSONAL  
ESTATE.

And each of them, the said (*intended wife*) and (*intended husband*), for herself and himself, and her and his heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of herself and himself respectively, and her and his respective heirs, executors, and administrators, and the said (*intended husband*) as to the acts, deeds, and defaults of the said (*intended wife*), during her coverture by him, doth hereby further covenant with the said and (*trustees*), their heirs, executors,



and administrators, that in case at any time, or from time to time, during the said intended coverture the said

and (*intended wife and husband*), in right of the said (*intended wife*), shall acquire, possess, or become entitled to by inheritance, or as next of kin, whether absolutely or contingently, or in possession, reversion, remainder, or expectancy, or otherwise, any real or personal estate beyond the value or amount of £ , then, and so often, the said

and (*intended wife and husband*) respectively, or their respective heirs, executors, or administrators, shall, upon the request of the trustee or trustees for the time being of these presents, and at the costs and charges of the aforesaid trust estate, or of such acquired property, settle and assure all such real and personal estate beyond the value of £ so and in such manner that the same may

become vested in the said trustee or trustees, upon, and subject to the same, or the like trusts and powers as are hereinbefore declared concerning the aforesaid trust moneys, stocks, funds, or securities, and the dividends, interest, and annual income thereof, or as near thereto as may be, and so that for assimilating the trusts of any such real estate to the trusts of the personal estate according to which the same ought so to be settled, proper powers and provisions for the sale of such real estate in such manner as the convenience of the property or other circumstances will admit or may require, and for the trustee or trustees to give discharges for the moneys to arise from such sale or sales, and for the investment of the moneys to arise from such sales in such stocks, funds, and securities aforesaid, may be inserted in such settlement or settlements; And furthermore, that in default

CHAP.  
IV.

FORM 63.  
COVENANT  
TO SETTLE  
REAL AND  
PERSONAL  
ESTATE.

Real or  
personal  
estate to be  
settled.

Upon  
trusts of  
settlement.

CHAP.  
IV.FORM 63.  
COVENANT  
TO SETTLE  
REAL AND  
PERSONAL  
ESTATE.Meantime  
to be held  
upon same  
trusts.

of such settlement or settlements being made, and until the same shall be so made, the said and (*trustees*), and their respective heirs, executors, administrators, and assigns, shall stand seised and possessed of, or interested in, such real and personal estate respectively, subject to the like trusts, according to which the same might or ought to be settled as aforesaid.

## CHAPTER V.

## FORMS IN SETTLEMENTS OF REAL ESTATE.

## 64.

*Limitation by Way of Use of Rent Charge in Bar of Dower, with Powers of Distress and Entry.*

To the use, intent, and purpose that the said (*intended wife*) (in case she shall survive the said \_\_\_\_\_, her intended husband) shall and may, from time to time, after the decease of the said (*intended husband*), and thenceforth during her life, have, receive, and take an annual sum or yearly rent charge of £ \_\_\_\_\_ yearly, issuing and payable out of, and charged upon, the said (*parcels*) hereby assured, or intended so to be, and to be paid to the said (*intended wife*) on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, by equal portions, without any deduction or abatement whatsoever, the first quarterly payment of the said rent charge to be made on such of the said days as shall happen next after the decease of the said (*intended husband*), and the same to be in the nature of a jointure and in bar of dower. And to this further use, intent, and purpose, that, from time to time, when the said rent charge shall be in arrear for \_\_\_\_\_ days next after any one

CHAP.  
V.  
FORM 64.  
JOINTURE  
RENT  
CHARGE  
WITH  
POWERS OF  
DISTRESS  
AND  
ENTRY.  
Uses to  
take rent  
charge.

Power of  
distress.

CHAP.  
V.  
FORM 64.  
JOINTURE  
RENT  
CHARGE  
WITH  
POWERS OF  
DISTRESS  
AND  
ENTRY.

Power of  
entry.

of the days whereon the same is to be paid as aforesaid, then it shall be lawful for the said (*intended wife*) or her assigns, into and upon the said (*parcels*), to enter and distrain for the same rent charge and the arrears thereof, and the distress and distresses then and there found, to detain, manage, sell, and dispose of, in the same manner and upon the same terms as distresses for rents, reserved upon leases for years, may be detained, managed, sold, and disposed of, and as if the said rent charge were a rent reserved upon a lease for years, to the intent that she, the said (*intended wife*), or her assigns, shall thereby, therewith, or otherwise be fully satisfied and paid the said rent charge and the arrears thereof, and all costs and expenses occasioned by the non-payment thereof. And to this further use, intent, and purpose, that from time to time, when the said rent charge shall be in arrear for                    days next after any one of the said days whereon the same is appointed to be paid as aforesaid, then it shall be lawful for the said (*intended wife*) or her assigns, without any formal or legal demand, into and upon the said (*parcels*), to enter, and the same to have, hold, and enjoy, and the rents and profits thereof to receive and take, for her and their own use and benefit, until she or they shall be fully satisfied and paid the said rent charge and the arrears thereof, and such costs and expenses as shall be occasioned by non-payment of the said rent charge at the days aforesaid, and such possession when taken to be without impeachment of waste.

65.

*Trus's of Term for Securing Pin-Money.*

And as to, for, and concerning the said term of ninety-nine years hereinbefore limited to the said (*trustees of pin-money term*), their executors, administrators, and assigns, as aforesaid, it is hereby declared and agreed, that the same is so limited to them upon trust, that the said (*trustees of pin-money term*) and the survivor of them, his executors and administrators, do and shall yearly, and every year during the joint lives of the said (*intended husband*) and his intended wife, by and out of the rents and profits of the said

and hereditaments comprised in the said term of ninety-nine years, or by mortgage, sale, or demise thereof, or of any part thereof, for all or any part of the same term, levy and raise the net yearly sum of £        sterling, and do and shall pay the same by four equal quarterly payments, on the        day of        , the        day of        , the        day of        , and the        day of        in every year, free of all deductions, unto such person and persons, and for such intents and purposes, as the said (*intended wife*), notwithstanding her intended coverture, shall from time to time, by any note or writing under her hand, but not by way of anticipation, direct or appoint; and in default of, and subject to, such direction or appointment, then into her own hands, for her sole use, separate and apart from the said

, her intended husband; and so that the same shall not be under his control, or subject to his debts, contracts, forfeitures, or engagements; and to

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V.  
FORM 65.  
TRUSTS OF  
PIN-  
MONEY  
TERM.

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FORM 65.  
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PIN-  
MONEY  
TERM.

be in the nature of pin-money ; and so that the receipt of the said (*intended wife*) shall be an effectual discharge for the same, when due but not before, the first quarterly payment of the said yearly sum of £           , to be made on such of the said days of payment as shall first happen after the solemnization of the said intended marriage ; and after full payment and discharge of the said yearly sum of £           as aforesaid, then upon trust, that the said (*trustees of pin-money term*), or the survivor of them, his executors or administrators, do and shall permit the person who shall, for the time being, by virtue of the limitations herein contained, be entitled to the reversion, freehold, or inheritance of the said hereditaments, to receive the rents and profits of the same for his and their own use and benefit. Provided always, and it is hereby declared and agreed, that if at any time there shall, through the wilful neglect or default of her, the said (*intended wife*), or her trustees, be more than two years' arrears of the said yearly sum of £           , then no further sum shall be raised to answer such arrears than what shall amount in the whole to two years' payment of the said yearly sum of £           , and the residue of such arrears shall sink into the inheritance of the said hereditaments comprised in the said term of ninety-nine years. Provided also, and it is hereby further declared and agreed, that, immediately after the decease of either of them, the said (*intended husband*) and (*intended wife*), and payment of all arrears of the said yearly sum of £           , and the costs, charges, and expenses of levying and raising the same, and when and as the trusts of the said term of ninety-nine years shall be fully performed, then the said term of

ninety-nine years, of and in the said

and hereditaments comprised in the same term, or so much thereof as shall remain unsold, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

CHAP.  
V.  
FORM 65.  
TRUSTS OF  
PIN-  
MONEY  
TERM.

66.

*Trusts of Term for Securing Rent Charge for Jointure.*

And it is hereby declared and agreed that the said term of 200 years hereby limited to the use of the said and (*trustees*), their executors, administrators, and assigns is so limited to them upon the trusts hereinafter expressed concerning the same (that is to say), Upon trust for securing to the said (*intended wife*) and her assigns the due and regular payment of the said annual sum or yearly rent of £ hereby provided for the said , and upon further trust in case, and when, and as often as the said annual sum or yearly rent of £ , or any quarterly portion thereof, shall be in arrear and unpaid in the whole or in part for three calendar months next after any of the days or times hereinbefore appointed for payment thereof, then and from time to time as often as it shall so happen, the said and (*trustees*), and the survivor of them, and the executors or administrators of such survivor, and their or his assigns, do and shall, by and out of the rents and profits of the said (*parcels*), for all or any part of the said term of 200 years therein, or by mortgage or sale thereof, or of a competent part thereof, or by bringing actions against, or making distresses upon, all and every or any of the present or future tenants of the said hereditaments and premises for recovery of

FORM 66.  
TRUSTS OF  
JOINTURE  
RENT  
CHARGE  
TERM.

To raise  
rent  
charge.

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V.  
FORM 66.  
TRUSTS OF  
JOINTURE  
RENT  
CHARGE  
TERM.

the rents then in arrear, or by making entries upon the same hereditaments and premises, or by all and every, or any one or more of the said ways and means, or by any other ways and means, levy and raise such arrears of the said annual sum or yearly rent of £ , as from time to time shall become due and remain unpaid, together with all such damages, costs, charges, and expenses as the said (*intended wife*) or her assigns shall incur, expend, sustain, or be put unto by reason of the non-payment of the said annual sum or yearly rent of £ , or any part thereof, together with the costs, charges, and expenses attending the execution of the trusts of the said term of 200 years, and do and shall, in the first place, retain and reimburse to and for himself and themselves the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him or them, and in the next place do and shall pay and satisfy to the said (*intended wife*), her executors, administrators, or assigns, all arrears of the said annual sum or yearly rent of £ , and all costs, charges, damages, and expenses which she and they shall have incurred, suffered, borne, sustained, and laid out by reason or on account of the non-payment of the same arrears thereof, or in or about recovering and enforcing the payment of the same. And upon further trust, that in the meantime, and until the said annual sum or yearly rent of £ , or some quarterly portion thereof, shall be in arrear or unpaid in the whole or in part for three calendar months after the time hereby appointed for the payment of the same, and also from time to time when and as often as all the arrears of the said annual sum or yearly rent of £ , and the said costs, charges, damages, and ex-

Meanwhile  
and sub-  
ject thereto  
parties  
entitled to  
receive  
rents.



penses shall be paid, the said                      and (*trustees*)  
 and the survivor of them, and the executors or administrators of such survivor, and their or his assigns, do and shall permit and suffer the person or persons who for the time being shall be entitled to the reversion or remainder of the same hereditaments comprised in the said term of 200 years immediately expectant on the determination of the same, to receive and take the rents and profits of the said hereditaments, and any moneys which from time to time shall remain unapplied for the purposes aforesaid, for his and their own use and benefit. Provided always, and it is hereby declared and agreed, that after the decease of the said                      , and payment to her, or to her executors, administrators, or assigns, of the said annual sum or yearly rent of £                      , and all arrears thereof, and also after payment of all such costs, charges, damages, and expenses as aforesaid, and also after full performance of the trusts of the said term of 200 years, then and thenceforth the said term of 200 years shall cease, determine, and be void, but without prejudice to any sale, mortgage, or disposition previously made of all or any part of the hereditaments comprised in the said term of 200 years, for any of the purposes hereinbefore mentioned, in pursuance of the trusts hereinbefore declared, concerning the same term. Provided also, and it is hereby further declared and agreed, that the person or persons who shall pay to the said                      and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, all or any part of the rents and annual profits of the said (*parcels*) hereby assured, or intended so to be, or advance any money upon any sale,

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V.

FORM 66.  
TRUSTS OF  
JOINTURE  
RENT  
CHARGE  
TERM.

Proviso for  
cease.

Receipts of  
trustees to  
be good  
discharges.

CHAP.  
V.FORM 66.  
TRUSTS OF  
JOINTURE  
RENT  
CHARGE  
TERM.

or the security of any mortgage of the said (*parcels*) hereby assured, or intended so to be, pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money, or any part thereof, nor be answerable or accountable for the misapplication or non-application of the same; and that every receipt which shall be given by the said \_\_\_\_\_ and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, for all or any part of the said rents, profits, and money, shall be an effectual discharge for the money therein acknowledged to be received.

## 67.

*Trusts of Term of 500 Years for securing Portions for Younger Children.*

FORM 67.  
TRUSTS OF  
PORTION  
TERM.

And as to, for, and concerning the said term of 500 years hereinbefore limited to the said (*trustees of portion term*), their executors, administrators, and assigns as aforesaid, it is hereby declared and agreed that the same is so limited to them upon trust in case there shall be any child or children of the said intended marriage (other than and except an eldest or only son), that the said (*trustees of portion term*), or the survivor of them, his executors or administrators, do and shall, upon the decease of the said (*intended husband*), by sale or mortgage of the said \_\_\_\_\_ and hereditaments comprised in the said term of 500 years, or of a competent part thereof, for all or any part of the same term, or by such other ways or means as to them or him shall seem fit, to levy and raise the sum of £ \_\_\_\_\_ sterling, and pay the same

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V.FORM 67.  
TRUSTS OF  
PORTION  
TERM.

unto or among all and every, or such one or more of the said children (other than except an eldest or only son), at such age or ages, days, or times, in such parts, shares, and proportions, and with such sum or sums of money for maintenance in the meantime, and subject to such provisoes and limitations over (such provisoes and limitations over to be for the benefit of some or one of the same children), in such manner and form as they, the said (*intended husband*) and his intended wife, at any time or times during their joint lives, by any deed or writing, with or without power of revocation, or as the survivor of them, the said (*intended husband*) and (*intended wife*), at any time or times after the death of the other of them, by any deed or writing, with or without power of revocation, or by his or her last will and testament, or any codicil thereto, shall direct or appoint: And in default of, and subject to, such direction or appointment, then do and shall pay the said sum of £        unto the child, if only one (other than and except an eldest or only son), or all the children if more than one (other than and except as aforesaid), who respectively, being a son or sons, shall attain the age of 21 years, or die under that age, leaving surviving issue, or being a daughter, or daughters, shall attain that age, or be married, and equally between or among them if more than one, and his, her, or their respective executors, administrators, or assigns, as tenants in common: And upon this further trust, that the said (*trustees of portion term*), or the survivor of them, his executors or administrators, do and shall in the meantime, from and after the decease of the said (*intended husband*), until the said portion or portions hereby provided for such

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FORM 67.  
TRUSTS OF  
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child or children as aforesaid, shall respectively become payable, by and out of the rents and profits of the said                      and hereditaments comprised in the said term of 500 years, levy and raise for the maintenance and education of the same child or children respectively such yearly sum or sums of money as to them the said (*trustees of portion term*), or the survivor of them, his executors or administrators, shall seem meet, not exceeding the interest of the same portion or portions respectively, after the rate of £4 per cent. per annum, and do and shall apply the same yearly sum or sums so to be raised, or, in the discretion of the said trustees or trustee, pay the same unto the guardian or guardians of the same child or children, to be by him or them applied in, for, or towards the maintenance and education of the same child or children respectively, the said yearly sum or sums for maintenance and education to be paid half-yearly on the day of                      , and the                      day of                      in every year, by equal portions, the first payment thereof to be made on such of the said days as shall next happen after the decease of the said (*intended husband*). Provided always, and it is hereby declared and agreed, that it shall be lawful for the said (*trustees of portion term*) and the survivor of them, his executors or administrators, at any time after the decease of the said (*intended husband*), from time to time, by all or any of the ways and means aforesaid, to raise any part of the portion or portions hereby intended and provided for any such child or children as aforesaid, being a son or sons, not exceeding in the whole one-half of the portion or portions which such son or sons respectively may then be presumptively entitled to under the trusts aforesaid, and to apply the same

for the placing out such son or sons in any profession, business, or employment, or for his or their instruction therein, or otherwise for his or their preferment or advancement in the world, notwithstanding his or their portion or portions shall not then have become vested, due, and payable. Provided also, and it is hereby further agreed and declared, that no child in whose favour any appointment shall be made, in pursuance of the power hereinbefore contained, shall be entitled to any further share of and in the remaining or unappointed part of the moneys hereby intended for portions as aforesaid, until he or she shall have brought his or her appointed share into hotchpot, and shall have accounted for the same accordingly. Provided also, and it is hereby further declared and agreed, that the said (*trustees of portion term*), or the survivor of them, his executors or administrators, do and shall permit and suffer the person or persons who shall for the time being be entitled to the reversion or remainder of the said and hereditaments comprised in the said term of 500 years, in the meantime and until some or one of the said portions hereby directed to be raised as aforesaid shall become due and payable by virtue of the trusts aforesaid, to receive and take for his and their own use and benefit the residue of the rents and profits of the same and hereditaments, which shall remain after payment of the said yearly sum or sums of money to be raised for the maintenance and education of such child or children as aforesaid. Provided also, and it is hereby further declared and agreed, that when the trusts hereinbefore declared of the said term of 500 years shall be fully performed, and the costs, charges, and expenses of and relating to the

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same paid and discharged, the same term of and in the said hereditaments therein comprised, or so much thereof as shall remain unsold or undisposed of, for the purposes aforesaid, shall cease and determine, to all intents and purposes whatsoever.

68.

*Power to Demise from Year to Year.*

FORM 68.  
POWER TO  
LET FROM  
YEAR TO  
YEAR.

Provided also, and it is hereby further agreed and declared, that it shall be lawful for the said trustee or trustees, for the time being, to let or demise all or any of the said hereditaments and premises hereby settled or intended so to be, from year to year, at such rent or rents as to him or them shall appear reasonable(a).

69.

*Power to Lease for 21 Years.*

FORM 69.  
POWER TO  
LEASE FOR  
21 YEARS.

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the person who, for the time being, by virtue of the limitations of these presents, shall be entitled to the freehold or freehold and inheritance in possession of the said hereditaments, and for the trustee or trustees for the time being, of the said term of      years, during the minority of any such person, by indenture to demise the said hereditaments hereby settled, or intended so to be, or any of them (other than and except      ), for any term or terms of years not exceeding 21

Terms of  
tenancy  
from year  
to year.

(a) It should be borne in mind, that the terms of a tenancy from year to year vary according to the custom of the country in which the land is situated. (2 Prid. Conv. 58 n.)

years in possession, and not in reversion, or by way of future interest, and so as there be reserved on every such lease the best or most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be demised, that can or may be reasonably obtained, without taking any fine, premium, or foregift on making thereof, and so as there shall be contained a condition or proviso for re-entry for non-payment of rent, and so as the lessee or lessees if thereunto required by the person or persons authorised to make and making such lease respectively, do execute a counterpart thereof, and do thereby covenant for the due payment of the rent, and so as no such lessee be exempted from punishment for committing waste.

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FORM 69.  
POWER TO  
LEASE FOR  
21 YEARS.

## 70.

*Power to grant Leases for Lives, or for Years  
determinable on Lives.*

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the person who, for the time being, by virtue of the limitations of these presents, shall be entitled to the freehold or freehold and inheritance in possession of the said hereditaments, and for the trustee or trustees, for the time being, of the said term of                      years, during the minority of any such person, by indenture to demise, lease, and grant all and singular the same hereditaments and premises, or any part thereof, for the life or lives of one, two, or three person or persons in such lease or leases to be named, or for any term or number of years determinable on the death or deaths of one, two, or three person or persons then in

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POWER TO  
GRANT  
LEASES FOR  
LIVES.

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POWER TO  
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LIVES.

being, to take effect in possession or in reversion; or by way of future interest, but so that the actual and reversionary terms or estates so to be granted and demised, do not together exceed three lives in being at one and the same time, and be determinable on the decease of the last surviving life, or be for a term of years determinable at the utmost on the decease of the survivor of three persons in being at one and the same time; and also to take and receive, on the making or granting of any such lease or leases, such sum and sums of money, by way of fine or premium, for the making and granting the same as any person or persons shall be willing to give or advance in that behalf, so as upon every such demise, lease, or grant, as last aforesaid, the best or most improved rent, with reference to the fine or premium, if any, to be obtained thereon, be reserved or made payable during the continuance thereof respectively, to be incident to and go along with the reversion or remainder of the same premises respectively immediately expectant thereon, and so as in every such demise, lease, or grant there be contained a proviso or condition of re-entry for non-payment of the rent or rents thereby respectively to be reserved, or any of them, or any part thereof, and so as none of the respective lessees be made free from impeachment, or punishable of or for waste by any express words to be therein contained, and so as the respective lessees execute counterparts of all such leases respectively, of which counterparts the mention of the same in such leases respectively shall in respect to such lessees, and all persons claiming under them, be legal and conclusive evidence.



## 71.

*Power to Grant Building Leases.*

Provided also, and it is hereby further declared and agreed, that it shall be lawful for the person, who for the time being, by virtue of the limitations of these presents, shall be entitled to the freehold or freehold and inheritance in possession of the said

and hereditaments, and for the trustee or trustees for the time being, of the said term of        years, during the minority of any such person, by indenture to demise, lease, or grant all or any part of the same

and hereditaments to any person or persons who shall be willing to improve the same, and shall covenant to improve the same by erecting or building thereupon any new house or houses, erections or buildings, or shall covenant to rebuild or repair any of the messuages, tenements, erections, and buildings whatsoever which then shall be on the said hereditaments, or any part thereof, or shall covenant to expend such sums of money on the permanent improvement of the said hereditaments, or the buildings on the same as shall be thought by the person or persons making such demise or lease respectively, adequate to the interest to be thereby departed with, for any term or number of years not exceeding 99 years, either in possession or in reversion immediately expectant on the determination of the subsisting lease for the time being of the said hereditaments, but so that the subsisting and reversionary terms do not exceed together the term of 99 years from the time of making such lease or leases respectively, and

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LEASES.

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BUILDING  
LEASES.

so as upon every such demise, lease, or grant to be made as last aforesaid, there be reserved and made payable, or agreed to be reserved and made payable, the best and most improved yearly rents, that with reference to the expenditure to be made on the demised premises respectively can be reasonably had or gotten for the same, and so as that in every such demise, lease, or grant there be contained a condition of re-entry for non-payment of the rent or rents thereby respectively to be reserved, and so as none of the respective lessees be made freed from impeachment or dispunishable of or for waste by any express words to be therein contained, other than such waste as shall be unavoidable through the performance of the covenants or stipulations for building, pulling down, rebuilding, and improving therein to be contained, and so as the respective lessees execute counterparts of such leases respectively, of which counterparts the mention thereof in any such lease or leases shall be in respect to all persons claiming under this settlement legal and conclusive evidence. Provided also, and it is hereby declared and agreed, that for the purpose of encouraging such erections, buildings, repairs, or improvements, as hereinbefore is mentioned, it shall be lawful for the persons making or authorised to make leases or demises, under this present power, to reserve a nominal rent for any term not exceeding five years from the making such leases or demises; and also to set out, but without including the same in any such demise or lease, or to include in any such demise or lease (without requiring any rent, or taking any nominal rent or rents by way of asserting or preserving evidence of ownership of the land, or for enforcing

regulations respecting the use and enjoyment of the same), any ground for making roads, ways, squares, gardens, or plantations. And, furthermore, that when the buildings, repairs, or improvements shall have been made in pursuance of any contracts, or in pursuance of any covenants and agreements to be entered into in any lease or leases, to be made in exercise of this present power, it shall be lawful for the person or persons, for the time being, entrusted with this present power of leasing, by any deed or deeds, instrument or instruments, in writing, to make such apportionment of the rent or rents for the hereditaments and premises contracted for or to be comprised in such lease or leases, as will charge the whole of the rent to be reserved on some part or parts only of the said hereditaments and premises, and charge the remaining part with a nominal yearly rent or nominal yearly rents.

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FORM 71.  
POWER TO  
GRANT  
BUILDING  
LEASES.

## 72.

*Power to Lease Mines.*

Provided also, and it is hereby further declared and agreed, that in the meantime and until any such sale and sales shall be made of all or any of the said lands, hereditaments, and premises, hereby assured or intended so to be, under or by virtue of the trusts or provisions of these presents, it shall be lawful for the said trustee or trustees to lease or demise the mines and minerals in, under, or upon any of the lands or hereditaments comprised in these presents, with or without any fine or premium, fines or premiums, and at such fixed or varying rent or rents, royalty or royalties, or otherwise, as the said trustee

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POWER TO  
LEASE  
MINES.

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POWER TO  
LEASE  
MINES.

or trustees may deem proper, and for such term or terms of years, or other period, as he or they shall consider advantageous, and to receive and take the rents and profits of the said lands, hereditaments, and premises hereby assured, or intended so to be, or such portion of the same respectively, as the said (*grantor*) would have been authorised to have received and taken but for the execution of these presents; and also such royalties, fines, and mineral rents as may be received as aforesaid, and apply the money so to be received from such fines, rents, royalties, and profits, after deducting all the costs and expenses in any way attending, receiving, recovering, obtaining, or getting in the same, and the taxes, repairs, and other incidental expenses to which the said estates are liable upon the same or the like trusts, as near as may be, and as circumstances will admit or shall require, as are hereinbefore declared concerning the moneys which shall arise from any sale or sales which may be made as hereinbefore authorised.

## 73.

*Powers of Sale and Exchange (a).*

FORM 73. Provided also, and it is hereby agreed and declared, that notwithstanding any of the uses, powers, and

Statutory  
powers of  
sale and  
exchange.

(a) Where, by settlement or will, trustees have conferred upon them a power of sale over any hereditaments subject to the uses or trusts of the settlement or will, such trustees, whether the hereditaments are vested in them or not, are now empowered by statute to exercise such power of sale by selling the hereditaments by public auction or private contract in the usual manner; and where the power authorises an exchange, also to exchange any hereditaments, and to give or receive any money for equality of exchange (23 & 24 Vict. c. 145 ss. 1-3). The money received upon any

trusts hereinbefore limited and declared (but subject to the power of leasing hereinbefore contained), it shall be lawful for the said \_\_\_\_\_ and (*trustees*), and the survivor of them, and the executors or administrators of such survivor, at any time or times hereafter, at the request and by the direction of the said \_\_\_\_\_ and \_\_\_\_\_ his said intended wife, jointly during their joint lives, and after the decease of one of them, then at the request and by the direction of the survivor of them, to be testified by some writing to be sealed and delivered by them, him, or her, in the presence of and to be attested by two or more credible witnesses, either by way of absolute sale

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FORM 73.  
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SALE AND  
EXCHANGE.

**Power to  
sell or  
exchange.**

such sale, or for equality of exchange, must be laid out in the manner indicated in the settlement or will, or if there be no such indication, then in the purchase of other hereditaments in fee simple in possession, or of leasehold lands held for sixty years or upwards, or lands of copyhold tenure, convenient to be held therewith, or with any other hereditaments subject to the uses or trusts of the same settlement or will, and the hereditaments so to be purchased or taken in exchange are to be settled and assured to the uses or upon the trusts of the settlement or will, or as near thereto as the nature of the tenure will admit; or the money to be received upon any sale or exchange may be applied in paying off or discharging any mortgage or other incumbrance affecting hereditaments subject to the same uses or trusts. (Ibid. ss. 4, 5.) Until the money to be received upon any sale or exchange shall be so disposed of, the same shall be invested at interest for the benefit of the same parties, who would be entitled to the hereditaments to be purchased therewith, and the rents thereof, in case such purchase and settlement were then actually made. But no such sale or exchange or purchase of hereditaments must be made without the consent of the person appointed to consent, by the settlement or will, or if no such person be appointed, then of the person entitled in possession to the rents of the hereditaments. (Ibid. ss. 4, 5, 7, 10.) The money required for equality of exchange may be paid by the trustees out of any money in their hands subject to the trusts, or may be raised by mortgage of the hereditaments received in exchange. (Ibid. s. 9.)

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SALE AND  
EXCHANGE.  
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or in exchange for or in lieu of any other lands and hereditaments to be situate in England or Wales, to sell or dispose of or give in exchange (a) all or any part of the said (*parcels*) hereby settled and assured as aforesaid, and the inheritance thereof in fee simple, to any person or persons whomsoever, for such price or prices in money, or for such equivalent or recompense in lands and hereditaments as to them the said

and (*trustees*), or the survivor of them, or the executors or administrators of such survivor shall seem reasonable; and for the purpose of giving effect to such sale, disposition, or exchange as aforesaid, it shall be lawful for the said and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, at such request, and by such direction as aforesaid, to be testified as aforesaid, by any deed or deeds, instrument or instruments, in writing, to be sealed and delivered by him or them in the presence of and to be attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore declared and expressed, and which under and by virtue of the said powers (except as aforesaid) shall be limited, declared, and expressed of and concerning the hereditaments so proposed to be sold or exchanged, or any part thereof; and by the same or any other deed or deeds, instrument or instruments, in writing, to be sealed and delivered and attested as

And for  
such pur-  
pose to  
revoke  
uses.

And make  
new ap-  
pointment.

Power to  
partition.

(a) Where an undivided share is settled, there should always be a power to partition. (5 Dav. Conv. 479 n.) This, however, can be conveniently given by adding here 'or by way of partition,' and afterwards in the appropriate place the like words, or to the same effect.

aforesaid, to limit, declare, direct, or appoint any such new or other use or uses, estate or estates, trust or trusts of the hereditaments, of which the uses shall be so revoked, as it shall be thought expedient to limit, declare, direct, or appoint for the purpose of giving effect to such sale, disposition, or exchange as aforesaid: And also, that upon every or any such exchange as aforesaid, it shall be lawful for the said

and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, to give, receive, or take any sum or sums of money by way of equality of exchange, and to deduct the money so given for equality of exchange out of any money which shall be raiseable or have been raised, under the powers hereinbefore contained, and in the meantime to charge the settled estates with the same money; and also that upon receipt of the money to arise by sale of the said hereditaments, or any part thereof, or upon the receipt of any money payable or to be received for equality of exchange, it shall be lawful for the said

and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, to sign and give receipts for the money for which the same real estate, lands, and hereditaments shall be so sold, or which shall be received for equality of exchange as aforesaid; and that such receipts shall, to the person or persons paying the same money respectively, be sufficient discharges for the money for which the same receipt or receipts respectively shall be given: And that the person or persons paying such money and taking such receipt or receipts for the same respectively as aforesaid, shall not afterwards be responsible, answerable, or accountable for the loss, misapplication,

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EXCHANGE.

Power to  
give or  
receive  
money for  
equality of  
exchange.

Power to  
give  
receipts.

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SALE AND  
EXCHANGE.Applica-  
tion of  
moneys in  
the pur-  
chase of  
other  
heredit-  
aments.

or non-application of the same, or be in anywise obliged to see to the application of such money, or any part thereof respectively. And it is hereby also agreed and declared, that when all or any part of the lands and hereditaments hereby made saleable as aforesaid, shall be so sold for a valuable consideration in money, or any money shall be received for equality of exchange under the powers hereinbefore contained, the said                      and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, shall, with all convenient speed, pay and apply the money to arise by such sale or sales, or to be received for such equality of exchange, in or towards satisfaction and discharge of the principal sums of money (if any) which are or shall then be a charge upon or affect the same hereditaments, including the money (if any) to be charged for money given for equality of exchange as aforesaid, and lay out and invest the surplus (if any) of such money; or in case there shall not be any such incumbrances, then all the same money in the purchase of other hereditaments in fee simple in possession, or subject only to leases at improved rents, to be situate in England or Wales, of a clear and indefeasible estate of inheritance in fee simple, or in the purchase of lands of copyhold or leasehold tenure, convenient to be held with the hereditaments hereinbefore settled and remaining unsold, or with the hereditaments to be purchased or taken in exchange as aforesaid: And, moreover, that the said                      and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, do and shall settle and assure, or cause to be settled and assured, the hereditaments to be purchased from time to time



as aforesaid, and also the hereditaments which from time to time shall be received by way of exchange, as hereinbefore mentioned, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, and declarations as by these presents are limited and declared, and by any exercise of the said powers shall be limited and declared of and concerning such of the hereditaments hereby conveyed and settled as aforesaid, as shall be so sold or exchanged, or as near thereto as the nature and quality of the tenure of the lands so to be purchased or taken in exchange, the deaths of parties, the change of interests, and other intervening circumstances will then admit, yet so that charges may not be increased or multiplied. And it is hereby also declared and agreed, that in the meantime and until the money to arise or be produced by or from the sale or sales of the hereditaments hereby made saleable, or to be received for or upon equality of exchange as hereinbefore expressed, shall be applied in manner hereinbefore directed, it shall be lawful for the said and (*trustees*), or the survivor of them, or the executors or administrators of such survivor, to invest such sum or sums of money in his or their name or names, in or upon the Government or Parliamentary stocks or funds of Great Britain, or real securities in England or Wales, but not in Ireland; and to alter, vary, and transfer the said stocks, funds, and securities from time to time as occasion shall require. And it is hereby also further agreed and declared, that the interest, dividends, and annual income, arising from such stocks, funds, or securities, shall go and be paid in manner, and to the persons,

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FORM 78.  
POWERS OF  
SALE AND  
EXCHANGE.

Meantime  
to be in-  
vested in  
funds.

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SALE AND  
EXCHANGE.

and for the intents and purposes, and in the shares and proportions in, to, and for which the rents and profits of the hereditaments to be purchased therewith, would go or be payable or applicable, in case such purchase or purchases and settlement thereof as aforesaid were then actually made.

## 74.

*Power to Jointure on a Wife.*FORM 74.  
POWER TO  
JOINTURE.

Provided also, and it is hereby further agreed and declared, that it shall be lawful for each and every person, to whom an estate for life is hereby limited, when and as by virtue of the limitations hereinbefore contained, he shall be in the actual possession or entitled to the receipt of the rents and profits of the said (*parcels*) hereinbefore directed, limited, or assured as aforesaid, or intended so to be, or any part thereof, by any deed or deeds, instrument or instruments, in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his last will and testament or any codicil thereto, to limit or appoint to or to the use of or in trust for any woman whom he from time to time shall marry, for the life of such woman for her jointure, and in bar or without being in bar of her dower or thirds at Common Law or by custom, any annual sum or yearly rent-charge not exceeding the clear yearly sum of £        sterling, to be issuing out of and charged and chargeable upon all or any part or parts of the said (*parcels*) hereby assured or intended so to be, with such powers and authorities by distress and entry upon and retention of the possession and perception of the rents and profits of the same hereditaments,

and such term of years therein for better securing the due payment thereof, as the person making such appointment shall think fit, and such appointment to take effect immediately after or by way of remainder expectant on the determination of the estate of the person making such limitation or appointment, and such limitation or appointment to be made either before or after such intermarriage as to the person who shall make such limitation or appointment shall seem meet, yet so that the said hereditaments shall not, under or by virtue of the aforesaid power, be subject or liable to the payment of more than the annual sum of £        in the whole, at one and the same time, nevertheless, any person entitled in remainder shall or may exercise the said power to jointure notwithstanding any subsisting charge, so as such additional charge shall from time to time be suspended as to so much and such part thereof, as together with and inclusive of any previous charge or charges shall exceed the clear annual sum of £        .

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FORM 74.  
POWER TO  
JOINTURE.

## 75.

*Power to Charge with Portions.*

Provided also, and it is hereby further declared and agreed, that it shall be lawful for any person who shall be entitled to the possession or actual receipt of the rents and profits of the hereditaments hereby settled or intended so to be under the limitations aforesaid, by any deed or instrument, in writing, with or without power of revocation and new appointment to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament, or any codicil, to subject

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CHARGE  
WITH  
PORTIONS.

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CHARGE  
WITH  
PORTIONS.

and charge all or any part of the said hereditaments hereby settled, or intended so to be, with the payment of any sum or sums of money, not exceeding in the whole the sum of £           , with interest for the same, from the time of making such charge or otherwise, for the portion or portions of the child or children of the person so authorised to exercise and exercising this power (other than and besides an eldest or only son who, by virtue of the limitations hereinbefore contained, shall, for the time being, be entitled to the said hereditaments, or the receipt of the rents or profits thereof), to be an interest or interests vested in and to be payable and paid to or amongst such child and all and every one or more of such children respectively, at such age, day, or time or respective ages, days, or times, and in such manner and form, and, if more than one, in such shares and proportions as the person authorised to exercise and exercising this power by any such deed or instrument, in writing, will, or codicil as aforesaid, shall direct or appoint, and for securing the payment of the sum or sums of money to be charged, by virtue of this power, with interest for the same, by the same or any other deed or instrument in writing so sealed, delivered, and attested, or by such last will or codicil as aforesaid, to limit the hereditaments to be charged with such sum or sums of money and interest as hereinbefore mentioned, to any person or persons respectively, for any term or terms of years, by way of trust or mortgage, with or without impeachment of waste, yet so that the said hereditaments hereby settled, or intended so to be, shall not, under or by virtue of this power, be subject or liable to the payment of any larger sum than £            in the whole at the same time.

## 76.

*Covenants for Title.*

And the said (*settlor*), for himself, his heirs, executors, and administrators, doth hereby covenant with the said \_\_\_\_\_ and (*trustees*), their heirs and assigns, that notwithstanding any act, deed, matter or thing whatsoever, made, done, executed, committed, or willingly and knowingly suffered to the contrary, by him the said (*settlor*) or any of his ancestors, donors, settlors, or testators, the said (*settlor*) now hath in himself good right or full power and lawful and absolute authority to grant and confirm the said (*parcels*), hereby assured or intended so to be, to the uses upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents: And also that, notwithstanding any such act, deed, matter, or thing as aforesaid, all and singular the said (*parcels*) hereby assured or intended so to be, shall and may from and after the solemnization of the said intended marriage, and thenceforth from time to time, and at all times for ever thereafter, remain, continue, and be, To the uses, upon the trusts, and in manner aforesaid, and notwithstanding any such act, deed, matter or thing as aforesaid, shall and may be peaceably and quietly held and enjoyed accordingly, without any let, suit, trouble, denial, eviction, ejection, interruption, claim, or demand whatsoever, of, from, or by him the said (*settlor*), or his heirs, or any other person or persons, lawfully or equitably and rightfully claiming or to claim by, from, under, or in trust for him or any of his ancestors, donors, settlors, or testators: And free and clear, and freely, clearly, and absolutely acquitted,

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FORM 76.  
COVE-  
NANTS FOR  
TITLE.  
Covenants.

Good right  
to convey.

Quiet en-  
joyment.

Freedom  
from  
incum-  
brances.

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FORM 76.  
COVE-  
NANTS FOR  
TITLE.

Further  
assurance.

exonerated, released, and for ever discharged or otherwise, by him the said (*settlor*), his heirs, executors, or administrators, at his or their own costs and charges in all things effectually defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, settlements, entails, estates, titles, troubles, liens, charges, and incumbrances whatsoever, heretofore or to be hereafter made, done, committed, executed, occasioned, or suffered by him the said (*settlor*) or his heirs, or any other person or persons, lawfully or equitably and rightfully claiming or to claim by, from, under or in trust for him or them or any of his ancestors, donors, settlors or testators, or by his or their acts, means, consent, default, privity, or procurement: And, moreover, that he, the said (*settlor*) and his heirs and all and every other person or persons, rightfully claiming or to claim by, from, under, or in trust for him or them, or any of his ancestors, donors, settlors, or testators, shall and will from time to time, and at all times, after the solemnization of the said intended marriage, on the request of any person or persons entitled or to be entitled to any estate or interest under any of the limitations, uses, or trusts hereinbefore contained, and at the costs and charges of the person or persons respectively by whom such request shall be made, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, conveyances, and assurances for more perfectly, lawfully, absolutely, or satisfactorily granting, confirming, or otherwise assuring the said (*parcels*) hereby assured,

or intended so to be, To the uses upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents, as by the person or persons respectively making such request, or his or their counsel in the law shall be reasonably advised, or devised, and required, and be tendered to be made, done, and executed.

CHAP.  
V.  
FORM 76.  
COVE-  
NANTS FOR  
TITLE.

77.

*Maintenance and Advancement Clause.*

Provided always, and it is hereby declared and agreed, that it shall be lawful for the said trustee or trustees, at any time or times after the death of the said \_\_\_\_\_ and (*intended husband and wife*), to apply all or any part of the rents, issues, and profits of the expectant or presumptive share of each, any, or either of the children of the said intended marriage of and in the said messuages, lands, hereditaments, and premises, during his or her minority, in or towards his or her maintenance, education, benefit, and advancement: And that so much of the rents, issues, and profits arising from the expectant or presumptive portion or share of each of the same children respectively as shall not be applied for his or her maintenance, education, benefit, or advancement, shall from time to time be invested in or upon such stocks, funds, and securities as herein mentioned; and the same and the resulting income of such stocks, funds, and securities shall, by similar investments and reinvestments, be accumulated by way of compound interest during such respective minority, and such accumulations shall follow and be subject to all the limitations, trusts, and dispositions herein

FORM 77.  
MAINTEN-  
ANCE AND  
ADVANCE-  
MENT.  
Mainten-  
ance.

CHAP.  
V.FORM 77.  
MAINTEN-  
ANCE AND  
ADVANCE-  
MENT.Advance-  
ment.

expressed, concerning the portion or share from whence the same may proceed: And further, that it shall be lawful for the said trustee or trustees, at any time after the death of the survivor of the said and (*intended husband and wife*), or in the lifetime of both or one of them, with their, his, or her previous consent in writing, by sale of part or mortgage of the whole or part of the expectant part or share of each or any of the children of the said intended marriage, of and in the said messuages, lands, hereditaments, and premises, to levy and raise any portion not exceeding one-half part of the value of the expectant share of such child respectively, for his or her advancement and preferment in the world, and lay out and apply the money so to be raised for his or her advancement or preferment accordingly.

## 78.

*Concise Forms of Powers for Maintenance and Advancement, and of Lease, Sale, and Exchange.*

FORM 78.  
CONCISE  
POWERS.Mainten-  
ance.

Provided always, and it is hereby declared and agreed, that it shall be lawful for the said trustee or trustees for the time being, at any time or times after the death of the survivor of them the said and (*intended husband and wife*), to apply the rents and profits of the then expectant or presumptive share of each or either of the children of the said marriage of the said and (*intended husband and wife*) of and in the said hereditaments and premises, in or towards the maintenance, education, benefit, or advancement of such child respectively during his or her minority; and that so much of the annual income arising from the



portion or share of each of the same children respectively, as shall not be applied for his or her maintenance, education, and advancement, shall from time to time, during his or her minority, be by the said trustee or trustees invested in his or their name or names, in or upon any of the Government or Parliamentary stocks or funds of Great Britain, and follow and be subject to all the limitations and trusts herein expressed and declared of and concerning the share of the said hereditaments, from the rents and profits whereof such accumulations may proceed: And, further, that it shall be lawful for the said trustee or trustees, after the death of the survivor of them, the said \_\_\_\_\_ and (*intended husband and wife*), or in the lifetime of both of them, with their previous consent in writing, or in the lifetime of such survivor, with the previous consent of such survivor, by sale or mortgage of a competent portion of the said settled hereditaments, to raise by way of advancement, and apply for the benefit of each or any of the children of the said intended marriage of the said \_\_\_\_\_ and (*intended husband and wife*), any part not exceeding one-half of his or her expectant share of and in the said settled hereditaments and premises: Provided always that it shall be lawful for the said trustee or trustees, with the consent in writing of the said \_\_\_\_\_ and (*intended husband and wife*), or of the survivor of them, and, after the death of such survivor, in the discretion of the said trustee or trustees, to lease the said hereditaments hereby settled, or intended so to be, or any of them, to any persons for any term not exceeding 21 years in possession at rack rent: And also, that it shall be

CHAP.  
V.  
FORM 78.  
CONCISE  
POWERS.

Advance-  
ment.

Power to  
lease,

CHAP. V.	lawful for the said trustee or trustees, by the direction in writing of the said                      and
FORM 78. CONCISE POWERS. and sell	(intended husband and wife), or the survivor of them, to sell all or any part of the said hereditaments hereby settled or intended so to be, in such manner, and by such means as the said trustee or trustees
or ex- change.	may think fit, or to exchange the same, or any part thereof, for any other freehold hereditaments of equal value, and to convey and assure the premises to be
Invest- ment of moneys in purchase of other heredita- ments or in funds.	so sold or exchanged as aforesaid. And it is hereby declared, that the clear moneys to arise from any such sale or exchange, after paying all necessary incidental expenses, shall, by the said trustee or trustees, with the approbation of the said
	and (intended husband and wife), or the survivor of them, and, after the decease of such survivor, then in the discretion of the said trustee or trustees, be laid out and invested in the purchase of other freehold hereditaments, or in the public stocks, or on Government or real securities in England or Wales, but not in Ireland; and that all such purchased hereditaments, stocks, funds, and securities as shall be so taken in exchange, or purchased or acquired under the provisions aforesaid, shall be settled or holden upon and for the same trusts, and subject to the same powers, provisions, and declarations as hereinbefore declared and contained, of and concerning the hereditaments hereby settled, that may produce the money so to be laid out, or such of them as shall be subsisting and capable of taking effect, or as
Power to give receipts.	near thereto as circumstances may admit. And it is hereby further declared, that every receipt which shall be given by the said trustee or trustees, for any moneys payable to them or him, under any of the

aforesaid powers, shall be effectual discharges for the same, and that the person or persons paying such moneys shall not afterwards be bound to see to the application or disposition thereof.

CHAP.  
V.  
FORM 78.  
CONCISE  
POWERS.

## 79.

*Covenant to Surrender Copyholds.*

And this Indenture further Witnesseth, that in pursuance and further performance of the said recited agreement in such behalf and for the consideration aforesaid, He the said (*settlor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said \_\_\_\_\_ and (*trustees*), their heirs and assigns, that in case the said intended marriage shall be solemnized, he the said (*settlor*) or his heirs shall and will, at his or their costs and charges, surrender into the hands of the lord of the said manor of \_\_\_\_\_, according to the custom thereof, All &c. (*parcels*), to such and the same uses, and upon such and the same trusts as are hereinbefore expressed concerning the said freehold hereditaments hereby assured, or intended so to be; and that in the meantime, and until such surrender shall be made, and there shall be admittance pursuant thereto, he the said (*settlor*) and his heirs shall stand seized of the same copyhold hereditaments, upon such trusts, and for such intents and purposes as will correspond with the uses, trusts, intents, and purposes hereinbefore expressed, concerning the freehold hereditaments hereby assured, or intended so to be, or as near thereto as the nature and quality of the tenure of the said copyhold hereditaments will admit.

FORM 79.  
COVENANT  
TO SUB-  
RENDER.

## 80.

*Trusts of Leaseholds by reference corresponding with  
Uses of Freehold Lands in Strict Settlement (a).*

CHAP.  
V.  
FORM 80.  
TRUSTS OF  
LEASE-  
HOLDS.

And it is hereby declared and agreed, that the said leasehold messuages or tenements, lands, and hereditaments are so assigned unto the said and (*trustees*), their executors, administrators, and assigns, upon the trusts hereinafter expressed concerning the same (that is to say), Upon trust for the said (*settlor*), his executors, administrators, and assigns, until the solemnization of the said intended marriage and after that event, Upon trust and to the intent and purpose that the same leasehold hereditaments may go along with the freehold hereditaments hereby settled, or intended so to be, and be held and enjoyed by the same persons and for the same uses, intents, and purposes, and be subject to the same or the like powers of leasing, selling, exchanging, and other powers, provisoes, uses, trusts, and limitations as are hereinbefore expressed con-

Statutory  
power to  
renew  
leaseholds.

(a) Trustees of leaseholds for lives or years, renewable under covenant or contract, or by custom, are now empowered, if they in their discretion so think fit, and it is to be the duty of such trustees, if thereunto required by any person having any beneficial interest in such leaseholds, to use their best endeavours to obtain a renewed lease of the same hereditaments on the accustomed terms, and for that purpose to make a surrender of the lease; but such power is not to apply to any case where, by the terms of the settlement or will, the tenant for life is entitled to enjoy the same without any obligation to renew the lease. The expenses of such renewal are to be paid by the trustees out of any money in their hands, subject to the trusts of the settlement, or by mortgage of the hereditaments contained in the renewed lease, or of any hereditaments held subject to the same trusts. (23 & 24 Vict. c. 145, ss. 8, 9.)

cerning the said freehold hereditaments, or as near thereto as may be, and the nature or tenure of the property and the rules of equity will permit, yet nevertheless so that the same leasehold hereditaments shall not vest absolutely in any person to be tenant in tail of the said freehold hereditaments under this settlement, unless or until such person shall attain the age of twenty-one years, or die under that age, leaving surviving issue, but, as far as the rules of law and equity will admit, shall belong to the person to whom the same, if lands of inheritance, and hereby settled as such, would in that event have belonged or descended.

CHAP.  
V.  
FORM 80.  
TRUSTS OF  
LEASE-  
HOLDS.

## CHAPTER VI.

## FORMS IN WILLS.

## 81.

*Trusts to receive Rents, and thereout make Allowances,  
Repair, Insure, and Manage generally.*

CHAP.  
VI.  
FORM 81.  
TRUSTS TO  
RECEIVE  
RENTS AND  
MANAGE  
ESTATE.

UPON trust that the said                      and (*trustees*) and the survivor of them, and the heirs of such survivor, or other the trustee or trustees for the time being of this my Will, do from time to time receive the rents and profits of my said freehold estate, and thereout make such deductions to, or allowances in favour of, the lessees or tenants thereof as he or they shall consider just and proper; and from and out of the said rents and profits do cause to be made from time to time such repairs of the said messuages and the buildings on the said estate as the lessees or tenants may not be bound to make, or as the said trustee or trustees may deem eligible; and also cause the said messuages and buildings to be insured against loss or damage from fire, to the full value thereof, in such office or offices for insurance as he or they may think fit, and manage the same estate for the benefit of the persons to be beneficially interested therein under this my will, in such manner generally as he or they may deem advantageous.

## 82.

*Maintenance and Advancement out of Real Estate  
during Minority.*

Provided also, and my Will is, that in case through the death of any or either of my said sons or daughters, his or her respective child or children would, if of the age of twenty-one years, be entitled to the rents and profits of all or any portion of my real estate, or any part thereof, then and from time to time during the minority of such child or children respectively, it shall be lawful for the said trustee or trustees to apply the rents and profits of the expectant or presumptive portion of each or any such child respectively therein for his or her maintenance, education, benefit, or advancement. Provided also, that it shall be lawful for the said trustee or trustees to levy and raise for the child or children of any or either of my sons and daughters respectively, with his or her consent whilst living, or, after his or her decease, then in the discretion of the said trustee or trustees, any sum or sums of money not exceeding one-half part in value of the expectant or presumptive share of each or any such child respectively, and apply the same for his or her advancement or preferment in life, and to levy and raise the same by sale, mortgage, or otherwise, as the said trustee or trustees shall think expedient.

CHAP.  
VI.

FORM 82.  
MAINTEN-  
ANCE AND  
ADVANCE-  
MENT.

Mainten-  
ance.

Advance-  
ment.

## 83.

*Power to Grant Agricultural, Building, and Mining Leases.*

CHAP.  
VI.  
FORM 83.  
LEASING  
POWERS.

To lease  
for 21  
years.  
Building  
leases.

Mining  
leases.

Provided also, and my Will further is, that it shall be lawful for the person or persons who from time to time, by virtue of the limitations herein contained, shall be entitled to the possession or receipt of the rents and profits of the said hereditaments hereby devised for any estate of freehold or inheritance, and who respectively shall be of the age of twenty-one years; and if any such person or persons be a female or females, notwithstanding her or their coverture; and for the trustee or trustees for the time being of this my Will, during the minority of any person or persons for the time being so entitled, by indenture to demise or let all or any of the hereditaments hereby devised for any term or number of years not exceeding twenty-one years, and also to lease all or any of the said hereditaments on building, improving, or repairing leases for any term or number of years not exceeding        years, and to lease all or any of my lands containing mines or minerals, or all or any of my mines opened or to be opened, and veins or seams of coal or other minerals, and any ground that may be convenient to be leased therewith, together with all necessary or expedient easements, privileges, licenses and authorities in respect of or for the purpose of working such mines or minerals for any term or number of years not exceeding        years, every such lease as aforesaid to take effect in possession and not in reversion or expectancy, and so as upon every such lease there be reserved and made



payable half-yearly or oftener during the continuance thereof, to be incident to and go with the reversion expectant thereon respectively, the best and most improved yearly rent or rents in money, and as to the mines and other property of that description, the best yearly rents either in money or in profits or produce by way of toll or royalty or partly in money, or partly in profits or produce, that can be reasonably obtained for the same, according to the nature and circumstances of the case, without taking any sum or sums of money, or anything by way of fine or income, for or in respect of any such leases, and so as the lessees respectively, their executors, administrators, or assigns (except the lessees of mines and the right of mining, and except the lessees of building, repairing, and improving leases, as far as respects such buildings, repairs, and improvements), be not made dispunishable of waste by any express words therein, and so as in every such lease there be contained a clause of re-entry on non-payment or non-render of the rent or royalty to be thereby respectively reserved for twenty-one days after the same or any part thereof shall become due; and so as the respective lessees, to whom such leases shall be made, do seal and deliver counterparts thereof respectively. Provided always, and on granting any building, repairing, or improvement lease or leases as aforesaid, a peppercorn rent may, with reference to the expenditure to be made in respect of such building, repairing, or improving the premises so to be demised, be reserved on any such lease or leases for the first, second, or third year or years of the term or terms to be granted, so as no fine or consideration be paid on account of such peppercorn rent or rents

CHAP.  
VI.

FORM 83.  
LEASING  
POWERS.

Best rents  
to be  
reserved.

Pepper-  
corn rent  
may be  
reserved.

CHAP.  
VI.FORM 83.  
LEASING  
POWERS.Agree-  
ments to  
grant  
leases may  
be entered  
into.Rent may  
be appor-  
tioned.

only being so reserved. Provided also, and my Will is, that it shall be lawful for the person or persons so authorized to grant any such building, improving, or repairing lease, to enter into any agreement or agreements for granting the same, so that the lease to be agreed for shall commence at the latest within from the date or execution of such respective agreement, and also that it shall be lawful for the persons so authorized to grant such building, improving, or repairing leases, to contract for the granting of the hereditaments so to be demised in several leases at apportioned rents; and in case any agreement shall have been entered into for granting any premises at an entire rent, then subsequently to grant leases, by virtue of the powers aforesaid of the said premises in parcels at apportioned rents, so as such rents be fairly and reasonably apportioned: And my Will is, that the certificate of the trustee or trustees for the time being of this my Will, shall be deemed conclusive evidence of the propriety or correctness of such apportionment.

## 84.

*Powers to Lease, Sell, and Exchange Freeholds, Leaseholds, and Copyholds.*

FORM 84.  
POWERS TO  
LEASE,  
SELL, AND  
EXCHANGE.  
Power to  
grant  
leases.

To sell.

And I hereby further declare, that it shall be lawful for my said trustee or trustees, from time to time, to grant leases of the said freehold, leasehold, and copyhold hereditaments, or any part or parts thereof, to any person or persons whomsoever, for such terms, at such rents, and upon such conditions as such trustee or trustees shall think fit; And also, at any time or times, absolutely to make sale and dispose of such freehold, leasehold, and copyhold

hereditaments, or any part or parts thereof, by public auction, or private contract, to any person or persons, for the best price or prices that can or may be reasonably obtained for the same, or to exchange the same, or any part or parts thereof, for any other freehold, leasehold, or copyhold hereditaments, of equal value, and of a clear title, free from all encumbrances, and to convey, surrender, or assign the premises so sold or exchanged as aforesaid; and when any such sale or sales as aforesaid shall be made, the clear moneys produced thereby (after paying all necessary and incidental expenses), shall be laid out and invested in the purchase of other freehold, leasehold, or copyhold hereditaments, of a clear title and free from encumbrances, or in the public stocks or funds, or on real securities in England or Wales, but not in Ireland, in the name or names of the said trustee or trustees; and all such freehold, leasehold, and copyhold hereditaments, stocks, funds, and securities as shall be taken in exchange, or purchased, or acquired, under the provisions last aforesaid, shall be held upon the same trusts, and subject to the same powers and provisions, as are in and by this my Will declared, concerning the freehold, leasehold, and copyhold premises for which the same shall be taken in exchange, or with the produce of which the same shall be purchased or acquired, or such of them as shall be subsisting, undetermined, and capable of taking effect, or as near thereto as circumstances and the rules of law and equity will admit.

CHAP.  
VI

FORM 84.  
POWERS TO  
LEASE,  
SELL, AND  
EXCHANGE.  
To ex-  
change.

Applica-  
tion of  
moneys.

85.

*Power to Compound Debts, and refer to Arbitration (a).*

CHAP.  
VI  
FORM 85.  
POWER TO  
COMPOUND  
DEBTS.

And I do hereby authorize and empower the executor or executors, or trustee or trustees, for the time being, of this my Will, to settle and adjust all accounts which shall or may be open or pending between me and any person or persons, and to receive or pay the balance or balances which shall appear to be due, or owing to or from me; and also, if they or he shall think fit so to do, to compound for any debt or debts which may be due to me at the time of my decease, and to accept and take such composition for the same as they or he shall think advisable; and, on receipt of all debts due or owing to me, on any such composition for the same as aforesaid, to give such releases and discharges for the same as shall be proper, and also to submit any such accounts or debts, as aforesaid, to arbitration, and to release, compound for, or otherwise act, in relation to the same, as the arbitrator or arbitrators shall award, and generally to manage and act in my said business, and as to my personal estate and effects in such manner as they, my said executors or trustees, shall think most for the advantage of the parties beneficially interested therein, under the bequests and trusts of this my Will.

(a) A power to compound debts and refer to arbitration is conferred by the Trustees' and Mortgagees' Act, 23 & 24 Vict. c. 145, s. 30.

## 86.

*Indemnity and Receipt Clause in Will.*

And I hereby further direct, that the person or persons by whom any moneys to arise from the sale, collection, or conversion of all or any part of my real or personal estate, or by whom any moneys, for the time being, forming part of my personal estate, or subject to the trusts or dispositions of this my Will respectively, may be paid to the trustee or trustees, for the time being, of this my Will, shall not afterwards be obliged or required to see to the application, or be answerable for the misapplication or nonapplication of the same or any part thereof; and that every receipt which shall be given for the said purchase or trust moneys, or any part thereof, by the person or persons, who, for the time being, shall be the acting trustee or trustees under this my Will, shall be an effectual discharge for the money therein acknowledged to be received (a).

CHAP.  
VI.  
FORM 86.  
INDEMNITY  
AND RE-  
CEIPT.

(a) Many of the forms in settlements (Chapters IV. & V.) will, *mutatis mutandis*, be found applicable also to wills.

## CHAPTER VII.

## FORMS IN PARTNERSHIP DEEDS.

87.

*Place of Trade.*CHAP.  
VII.

FORM 87.

PLACE OF  
TRADE.

THE said trade or business shall be carried on in the house of the said (*one of the partners*), in the town of \_\_\_\_\_, or in such other convenient place in the said town of \_\_\_\_\_, as shall be agreed on by both of them, the said partners, under the firm of \_\_\_\_\_ and \_\_\_\_\_.

88.

*That Fixtures in the House shall Remain the Sole Property of One of the Partners.*

FORM 88.  
PROVISION  
AS TO  
FIXTURES.

THE counters, shelves, and other fixtures of the said (*one of the partners*), now in and about the said dwelling-house, and the offices belonging thereto, and particularly in the shop and warehouses belonging to the said dwelling-house, shall remain and continue the property of him the said \_\_\_\_\_.

89.

*That the Capital shall be Advanced in Portions.*

FORM 89.  
ADVANCE-  
MENT OF  
CAPITAL.

THE sum of £ \_\_\_\_\_, or effects to that value, shall be the capital or stock in money of the said \_\_\_\_\_.

partnership, and the said (*one partner*) shall forthwith advance the sum of £                      part thereof, or effects to that value, and the said (*other partner*) shall forthwith advance the sum of £                      other part and residue thereof, or effects to that value ; and at the end of the first                      years of the said partnership in case the same shall be subsisting at that time, and the same is to be continued, the said                      shall pay to the said                      such sum or sums of money as shall be necessary to make their shares of capital equal.

CHAP.  
VII.FORM 89.  
ADVANCE-  
MENT OF  
CAPITAL.

90.

*Partners to be Entitled to certain Proportions for so many Years.*

The said (*one partner*) shall, during the first                      years of the said term of                      years, be entitled to                      parts or shares of the gains, profits, increase, and benefit arising from the said capital, or by means of the said trade or business, and also of all and singular the moneys, goods, debts, estate, and effects whatsoever, which from time to time shall be in or belong to the said partnership ; and the said (*other partner*) shall, during the first                      years, be entitled to the remaining                      parts of the gains, profits, increase, and benefits arising from the said capital, or by means of the said trade or business, and also of all and singular the money, goods, debts, estates, and effects belonging to the said partnership.

FORM 90.  
PROPOR-  
TIONS TO  
WHICH  
PARTNERS  
ENTITLED.

## 91.

*After certain Number of Years and on Payment of a certain Sum, Partners are to be equally Entitled.*

CHAP.  
VII.  
FORM 91.  
WHEN  
PARTNERS  
EQUALLY  
ENTITLED.

From and after the expiration of the said years of the said term of years, if the said partnership shall not be dissolved or determined, pursuant to the provision hereinafter contained for that purpose, and on payment by the said (*one partner*) to the said (*other partner*) of the said sum or sums of money as aforesaid to make the shares of capital equal, each of them the said partners shall be entitled to one equal moiety or half part of the gains, profits, increase or benefit from thenceforth to arise from the said capital, or by means of the said joint trade or business, and also one equal moiety or half part of all and singular the money, goods, debts, estate, and effects whatsoever, which from thenceforth and from time to time thereafter, shall be in or belong to the said partnership trade, or business.

## 92.

*Expense of Alterations to be Paid out of Profits.*

FORM 92.  
EXPENSE  
OF ALTER-  
ATIONS.

The expense of all alterations and improvements which, during the continuance of the said partnership, shall be made for the benefit or convenience of the said trade only, shall be borne and paid out of the gains and profits of the said partnership trade, or out of the partnership effects.



## 93.

*Allowance to One Partner for Entertaining Customers, and other Charges and Losses to be borne by the Partners in certain Proportions.*

The said (*one partner*) shall yearly and every year, during the continuance of the said partnership, be allowed out of the profits of the said trade or business or the partnership effects, the sum of £        as a compensation for the extra expenses he will incur in the said partnership concerns from treating and entertaining the customers to the said joint trade and business, and that all other necessary charges and expenses to be occasioned or incurred in the said trade or business, and all debts and demands which shall be contracted for or on account of the said trade or business, the expense of insuring the stock in trade and all losses which shall happen in the said joint trade or business by bad debts, suits or actions in any court or courts of law or equity, or by any casualties whatsoever, shall, as to        parts thereof, be sustained, paid, and borne by the said        out of his share of the profits of the said joint trade or business or of his share of the partnership effects, or in case of a deficiency, then out of his separate property, and, as to the        remaining parts thereof, be sustained, paid, and borne by the said       , out of his share of the profits of the said joint trade or business, or out of his share of the partnership effects, or in case of a deficiency, then out of his separate property.

CHAP.  
VII.

FORM 93.  
ALLOW-  
ANCE FOR  
CUSTOMERS.

94.

*Loss by Bad Debts to be Sustained equally.*

CHAP.  
VII.  
FORM 94.  
LOSS BY  
BAD  
DEBTS.

The charges, expenses, and losses to be incurred by reason of bad debts and otherwise, shall be sustained, paid, and borne by the said partners out of the profits of the said trade or business in equal shares and proportions, or out of the said partnership effects, or in case of a deficiency, then by the said partners in equal proportions.

95.

*Faithful Employment and just Accounts in the Partnership (a).*

FORM 95.  
FAITHFUL  
EMPLOY-  
MENT.

Each of them the said                      and                      (*partners*) shall and will from time to time, and at all times, during the continuance of this partnership, diligently and faithfully employ himself in and about the affairs of the said partnership, and conduct, manage, direct, transact, and carry on the same joint trade and business as far as may be for the benefit and advantage of the said partnership; and each of the said partners shall and will by himself, or some agent or clerk, to be employed under him, write and enter, or cause to be written and entered, into proper books of account, to be provided from time to time for that purpose, and kept in the counting-house,

Partner  
not en-  
titled to  
remunera-  
tion.

(a) Unless there be a special agreement to such effect, a partner is not entitled to any compensation or reward for his services, but is under obligation to render the whole of his time gratuitously, and to devote his abilities to the benefit of the affairs of the partnership without any remuneration whatever. (5 Dav. Conv. 774 n.)

shop, or office in which the said business shall be transacted, full, true, and particular entries of all business which shall be transacted by them respectively, or by any clerks or servants acting under their direction in the course of the said partnership business, or of the moneys to be received and paid by the said partners, or either of them, or any of their clerks or servants respectively, to or concerning the said partnership, together with all such circumstances of names, times, and places as may be necessary or thought useful for manifesting the state and proceedings of the business of the said partnership; and that each of the said partners shall and will be just, true, and faithful to each other in all their accounts, reckonings, receipts, payments, and transactions in and about the business of the said partnership.

CHAP.  
VII.  
FORM 95.  
FAITHFUL  
EMPLOY-  
MENT.

## 96.

*Neither to be Engaged in any other Concern, nor to Pay Profits into Firm of such other Trade (a).*

Neither of the said partners shall or will at any time, during the said partnership, either alone or jointly and in partnership with any other person, or as a principal or assistant, carry on any trade or business other than and except and for the benefit of the said                      and                      (*partners*), on account of their said partnership; and also that, in case either of the said partners shall, during the continuance of

FORM 96.  
NOT TO BE  
ENGAGED  
IN ANY  
OTHER  
TRADE.

(a) Unless there be an express restriction against carrying on any other trade or business, the partners will be at liberty to do so, and such a course will not be an infringement of the articles. (*Moore v. Colman*, 18 Ves. 437; *Glassington v. Thwaites*, 1 S. & S. 124, see p. 132.)

Restriction  
against  
carrying  
on any  
other  
trade.

CHAP.  
VII.FORM 96.  
NOT TO BE  
ENGAGED  
IN ANY  
OTHER  
TRADE.

the said partnership, be concerned in any trade or business whatsoever contrary to the true intent and meaning of these presents, then the partner by whom such trade shall be carried on shall or will, by way or in the nature of stated damages, and if thereunto requested by the other of the said partners, pay into the stock of the said partnership such sum or sums of money as shall be equal to the proportion as he shall derive from time to time from the trade or business to be carried on as aforesaid contrary to the true intent and meaning of these presents; and the same sum or sums of money shall be divided between the said partners in proportion to their shares for the time being in the profits of the said partnership; and that all the losses of the trade or business to be carried on contrary to the true intent and meaning of these presents shall be borne and paid by the partner by whom the said trade or business shall be so carried on.

## 97.

*Neither without Consent to Release or Compound Debt, and to be Answerable for whole Debt if Contravening.*

FORM 97.  
NOT TO  
COMPOUND  
DEBTS.

Neither of the said partners, without the consent of the other of them first had and obtained, shall compound, release, or discharge any debt which shall be due or owing to the said partners on account of the said joint trade or business, except such sum or sums only as shall *bonâ fide* be received and brought into the cash of the said partnership; and each of the said partners shall be answerable and accountable for and make good to the cash of the said business

all and every sum or sums of money which he shall actually receive, or for which he shall, without such consent as aforesaid, give any receipt or discharge.

CHAP.  
VII.

FORM 97.  
NOT TO  
COMPOUND  
DEBTS.

98.

*Neither without Consent to Become Surety.*

Neither of the said partners shall at any time, during the continuance of the said partnership, without the consent in writing of the other of them first had and obtained, become bound or surety with or for any person or persons whomsoever, or borrow any money for the purpose of lending the same under the penalty of £            for each and every such act, to be paid to the other of the said partners, his executors or administrators, by way or in the nature of stated damages.

FORM 98.  
NOT TO BE  
SURETY.

99.

*Nor Enter into Obligations, Draw or Accept Bills on Partnership Firm, except in Partnership Concern (a).*

Neither of the said partners shall, without such consent as aforesaid, enter into any obligation, or draw, or accept, or endorse any note of hand or bill of exchange, in the name or firm of the said partnership, or on account thereof, other than and except in the regular and ordinary course of conducting the business of the said partnership, and for an equivalent

FORM 99.  
NOT TO  
ENTER  
INTO OB-  
LIGATIONS.

(a) As a general rule one partner can bind the others in drawing or accepting bills of exchange, or making promissory notes in the ordinary course of business; but one partner cannot bind the others by bond or deed except in the way of release of a debt or demand.  
(5 Dav. Conv. 792 n.)

How far  
one partner  
can bind  
the others.

CHAP.  
VII.

FORM 99.  
NOT TO  
ENTER  
INTO OB-  
LIGATIONS.

received or to be received into the stock of the said partnership, or knowingly or wilfully do or suffer to be done any act, matter, or thing whatsoever, whereby or by means whereof the person or effects of the other of them, or the money, debts, goods, or effects belonging, due, or owing to the said partnership, may be seised, extended, attached, or taken in execution, encumbered, or affected in anywise howsoever.

## 100.

*Neither to Give Credit, nor Contract Debt beyond £ , nor Take Apprentice without Consent, and Apprentice to be Maintained by One Partner, and, on his Death, by other.*

FORM  
100.  
CREDIT  
AND AP-  
PRENTICE.

Neither of the said and (partners) shall at any time, during the continuance of the said partnership, without the consent of the other of them, give credit or contract any debt on account of the said partnership beyond the sum of £ , nor give credit to any person whom the other shall have forewarned to be trusted; nor, without the consent of the other of them, take any apprentice, journeyman, or other servant, to be employed in the said joint business, and that the premium to be received with every apprentice which shall be taken shall be added to and deemed part of the capital of the said joint stock, and that the said (one partner) shall maintain and provide for every such apprentice during his apprenticeship, and shall be allowed out of the gains and profits of the said joint trade, or out of the partnership effects, the sum of £ yearly for each and every apprentice, or journeyman, to be employed in the said trade or business, for

whose maintenance he shall provide as aforesaid ; and that, in case of the death of either of the said partners during the term of any such apprenticeship, the survivor of them shall keep and maintain such apprentice until the end of his apprenticeship, and shall be allowed out of the partnership effects at and after the rate of £            a year for so much of the time of such apprenticeship as shall remain unexpired, as a compensation for the board and instruction of the same apprentice.

CHAP.  
VII.

FORM 100.  
CREDIT  
AND AP-  
PRENTICE.

## 101.

*Securities to be Taken in Name of Firm.*

All securities for money due, owing, or belonging to the said partnership, and contracts concerning the said partnership, trade, or business, shall be made and taken in the joint names of the said and            (*partners*).

FORM  
101.  
SECURI-  
TIES.

## 102.

*Books of Account and Securities to be Kept in Counting-house, and each Partner to Have Access.*

The books of account, and all notes, bills, letters, securities, and writings which do or may concern or relate to the business of the said partnership, and all books and papers which shall be the joint property of the said partners, shall be kept in the counting-house or office in which the said joint business shall be transacted, or in such other convenient place or places in which the said partners shall fix and agree ; and that each of the said partners, his executors and administrators, shall and may have free access to all or any of the said books, notes, letters, securities, or

FORM  
102.  
BOOKS OF  
ACCOUNT.

CHAP.  
VII.  
FORM 102.  
BOOKS OF  
ACCOUNT.

writings, with liberty to inspect, examine, compare, and transcribe the same when he or they shall think proper, without any hindrance or denial of the other of them, his executors or administrators; and that such books, notes, letters, securities, and writings shall not, on any occasion, or at any time, be disturbed by either of the said partners, his executors or administrators, except as hereinbefore mentioned, or carried away by either of them, his executors or administrators, without the consent of the other of them, his executors or administrators, from the place or places in which the same shall be usually kept.

103.

*Either, with Consent, to Bring a larger Sum into Business, but not to be Withdrawn without Permission, and during Continuance to Carry Proportion of Gains.*

FORM  
103.  
BRINGING  
IN NEW  
CAPITAL.

It shall be lawful for each or either of the said partners, at any time during the said copartnership, with the consent and approbation of the other of them, to advance and bring any sum or sums of money into the said joint stock beyond his share or proportion of capital for increasing the said trade: And that the partner so advancing the same shall not be at liberty to take or draw the whole or any part of the same money out of the said partnership trade, or business, without the consent of the other partner, unless he shall have given calendar months' previous notice in writing for that purpose; and for all money to be advanced by each or either of the said partners beyond his share the said joint trade shall be a debtor to the partner lending the same, and the same shall be a lien on the partnership



effects, and such money shall be entered in the cash book as owing to the partner lending the same; and the partner who, from time to time, shall advance or lend any such money, shall from time to time, or from the respective times of advancing the same, and thenceforth as long as the same money shall be unpaid, as part of the said joint stock, or on account of the said partnership, have and receive from and out of the profits of the said joint trade, or from and out of the said partnership effects, interest for the money he shall so advance, at the rate of £ per cent. per annum.

CHAP.  
VII.  
FORM 103.  
BRINGING  
IN NEW  
CAPITAL.

104.

*Accounts to be made out Yearly, and during Interval  
Sum to be taken out by each Partner for Domestic  
Purposes.*

Once in every year, during the continuance of the said partnership, and in the month of in each year, or as near thereto as conveniently may be, the said partners shall and will join together in making out a perfect account and valuation of and concerning the said joint stock and trade, of all goods, debts, and effects owing and belonging to the said partnership, and of all debts, sum or sums of money due from the same; and the said general yearly account so to be made out and stated shall, from time to time, be entered and written in two books, and the foot or balance of such account in each of the said books shall be signed or subscribed by the said partners in testimony of their approbation of such account, and each partner shall have one of the said books for his own use. And the accounts to be stated, settled, and

FORM  
104.  
YEARLY  
ACCOUNTS.

CHAP.  
VII.  
FORM 104.  
YEARLY  
ACCOUNTS.

subscribed shall not afterwards be called in question, opened, or in any manner contravened, unless some error or mistake to the amount of £      and upwards shall plainly appear to have been made therein, and then so far only as respects such error or errors; and the clear profits which shall appear on the settling of such account, except such part thereof as the said partners shall from time to time mutually agree to divide in proportion to the shares in which they shall be entitled to the same, shall be added to the capital of the said partnership trade, or business, for the improvement and increase thereof, and, except as hereinafter mentioned, shall be divided between the partners for the time being, in proportion to their respective shares thereof; and such additional capital shall, for all the purposes of these presents, be subject to the same provisions as are hereby made concerning the capital of the same trade. And also, in the interval and between the time of settling every such annual account as aforesaid, it shall be lawful for each of the said partners to take out of the said partnership moneys and effects the sum of £      monthly for their own respective family use; but, on the settling of each such annual account as aforesaid, the sum which each partner shall have taken out of the said partnership effects in the preceding year shall be deducted and allowed out of his share of the profits of the said business.

105.

*Provision for earlier Determination of Partnership.*

FORM  
105.  
TERMINA-  
TION OF  
PARTNER-  
SHIP.

If either of the said partners shall be desirous to determine and dissolve their partnership at the end of the first      years of the said term, and of such his

intention shall give to the other calendar months' notice in writing, or shall leave the same for him at his last or most usual place of abode in England, then, at the expiration of the said years, the said partnership shall cease and determine.

CHAP.  
VII.

FORM 105.  
TERMINA-  
TION OF  
PARTNER-  
SHIP.

## 106.

*On Death of either Partner during Term, Stock may be Taken by Survivor on Discharging Partnership Debts, Paying Part, and Giving Bond for Payment of Remainder.*

In case either of the said partners shall happen to die during the continuance of the said partnership, then the surviving partner, if he shall think fit, shall be entitled to, and shall have, receive, and take all the stock-in-trade, debts, and effects then due and belonging to the said partnership trade or business, upon the terms that he shall agree to discharge all the debts owing by the said partnership within after the death of the deceased partner, and to pay to the executors or administrators of the deceased partner such sum of money as by the annual account which shall be taken out last or next before the death of the partner so dying shall appear to be the amount of the value of his share of and in the said partnership trade or business, and the effects belonging to the same, together with interest on that sum or amount from the day on which such account shall be taken to the day of the death of the partner so dying; and also, together with such other sum or sums of money and interest as on the day of the death of the partner so dying shall be owing from the said partnership to the partner so dying, and upon the terms that the surviving partner shall,

FORM  
106.

COURSE TO  
BE PUR-  
SUED ON  
DEATH.

CHAP.  
VII.

FORM 106.  
COURSE TO  
BE PUR-  
SUED ON  
DEATH.

within                      after the death of the deceased partner, pay to the executors or administrators of the deceased partner the sum of £        , part of the value of the said share of partnership effects, and shall, within the same time, enter into a bond thereby binding himself, his heirs, executors, and administrators, to the executors or administrators of the deceased partner, in a sufficient penalty, to pay to the executors or administrators of the deceased partner the residue of the amount of the value of the share of the deceased partner in the partnership effects, and of the interest to be paid in respect thereof: And also of the debt or debts, sum or sums of money (including interest) owing from the said partnership to the deceased partner in        equal instalments, to be payable with interest thereon, at the rate of £5 per cent. per annum from the death of the person so dying in manner following; that is to say, the first instalment, together with interest on the whole sum secured by such bond to that time at the end of        calendar months from the death of the deceased partner, and each of the other instalments, together with interest on the sum remaining due from time to time, at the end of each successive calendar month from the end of        calendar months, to be computed from the death of the partner so dying; and shall also enter into a bond to the executors or administrators of the deceased partner, to pay all the debts which, at the death of the partner so dying, shall be owing from the said partnership, or from the partner in respect thereof within        from the death of the partner so dying; and to indemnify and save harmless the heirs, executors, administrators, and assigns of the said deceased partner

from the same debts, and all payments, costs, losses, charges, damages, and expenses, by reason of the same debts: And that, as soon as the said sum of £        shall be paid, and the said bond entered into, the executors or administrators of the deceased partner, on the request and at the costs and charges of the surviving partner, his executors or administrators, shall make and execute to him or them an assignment of the share of the deceased partner of all the said estate debts and sums of money then due, owing, and belonging to the said partners on account of the said partnership, with full power and authority to collect and receive to his and their own use all the debts then due or owing to the said partners on account of the said partnership: Nevertheless, so that in and by such assignment the said surviving partner shall declare that he stands possessed of and interested in the share of the deceased partner thereby assigned, and his own share of and in the said partnership estate, debts, and effects: Upon trust thereout to satisfy the debts due from the said partnership, and subject thereto, according to their then respective shares, rights, and proportions of and in the premises.

CHAP.  
VII.  
FORM 106.  
COURSE TO  
BE PUR-  
SUED ON  
DEATH.

## 107.

*In case of Refusal by Survivor to Take Stock, or on Dissolution, Debts to be Paid and Stock Sold, and Books to be Left with Surviving Partner.*

In case the said partnership shall be determined by notice as aforesaid, at the end of the first years of the said partnership, or one of the said partners shall depart this life, and the other of them shall not choose to take on himself the share of the

FORM  
107.  
WHERE  
STOCK NOT  
TAKEN,  
COURSE  
TO BE  
PURSUED.

CHAP.  
VII.  
FORM 107.  
WHERE  
STOCK NOT  
TAKEN,  
COURSE  
TO BE  
PURSUED.

other of them upon the terms hereinbefore expressed, or the said partnership shall expire by effluxion of time, then and in any one of the said cases all the debts which shall then be due and owing by or on account of the said partnership, including all debts owing from the said partnership to the partners respectively, shall be discharged by and out of the partnership effects, or a fund shall be set apart, in the hands of some banker or bankers, for answering the same when due and demanded; and that all the goods, chattels, and other effects of the said partnership (except debts owing to the same) shall be sold and disposed of by public auction to the highest bidder or bidders, with liberty to either of the said partners, his executors or administrators, if the highest bidder or bidders, to become the purchaser or purchasers thereof: And the debts owing to the said partners, on account of the said partnership, shall be collected by the said partners, or in case of the death of one of them, then by the survivor of them; and the money arising from such sale, and also the money then in and belonging to the said partnership, and also the surplus (if any) of the money to be appropriated for payment of the debts owing from the said partnership when and as the same debts shall have been satisfied, and also the debts owing to the said partners, and which shall be collected from time to time, shall when and as often as the money in hand, after appropriating a fund for the payment of debts as aforesaid shall amount to £ , be divided between the partners if both living, and, if one shall be dead, then between the surviving partner and the executors or administrators of the deceased partner, and, in case both

partners shall be dead, then between their respective executors or administrators in proportion to the shares in which the said partners shall be entitled to the said partnership effects at the time of the dissolution or determination of the said partnership. And after such sale as aforesaid, and after dividing the effects belonging to the said partners on account of the said partnership, the said partners, or the survivor of them, and the executors or administrators of the deceased partner, or the executors or administrators of each partner in case both shall be dead, shall execute mutual releases to each other concerning all dealings and transactions in anywise relating to the said partnership and partnership effects. And in case of the determination of the said partnership, by the death of one of the said partners, then all the books, accounts, vouchers, and papers in anywise relating to the said partnership and partnership effects shall be left in the custody of the surviving partner, whether he shall or shall not become the purchaser of the share of the other of them, to enable him to collect the debts and settle the accounts of the said partnership: Nevertheless, without prejudice to the right of the executors or administrators of the deceased partner to inspect and take copies of all or any of the same books, accounts, vouchers, papers, and writings.

CHAP.  
VII.FORM 107.  
WHERE  
STOCK NOT  
TAKEN,  
COURSE  
TO BE  
PURSUED.

## 108.

*On Death during Term, Survivor shall Purchase and Carry on Business for Twelve Months for Benefit of Self and Executors of Deceased Partner.*

CHAP.  
VII.  
108.  
BUSINESS  
CARRIED  
ON AFTER  
DEATH.

Provided always and in case either of the said partners shall die during the continuance of the said partnership, the survivor shall carry on the said trade or business for the space of twelve calendar months next after the death of the said deceased partner, or which shall first happen, to the end of the        years, or the time which by any such notice as aforesaid shall have been fixed on for determining the said partnership, for the joint and equal benefit of himself and the executors or administrators of such deceased partner; and on the expiration of such twelve calendar months or other sooner determination of the said partnership, at the time aforesaid, the surviving partner shall be exclusively entitled to the lease or leases of any building or warehouse employed in the said partnership trade or business, without any premium, allowance, or consideration for the same, and shall enter into a bond in a sufficient penalty for the indemnity of the heirs, executors, or administrators of the deceased partner, of and from all rents, covenants, and agreements, thenceforth to be paid and performed for or in respect of any such lease or leases, and the buildings and warehouses held by virtue of the same lease or leases. And the surviving partner shall take to all the stock-in-trade, goods, debts, and fixtures of and belonging to the said partnership trade or business at a valuation thereof, to be made by two indifferent persons, one



to be named by the surviving partner, and the other by the executors or administrators of the deceased partner, with power to such two referees to name a third person either as their umpire or to act jointly with them. And the determination of such umpire, or of such two referees, or of any two of such three referees, shall be final or conclusive on the surviving partner, and all persons claiming under such deceased partner; and such valuation shall be made, with an allowance or deduction for all debts due and owing by or from the said partners on account of their said partnership, and for the maintenance and instruction of apprentices at the rate aforesaid; and all ready money (if any) belonging to the said partnership shall be applied, as far as the same will extend, in discharge of the debts due and owing by or from the said partnership; and the surplus thereof (if any) shall be divided between the surviving partner and the executors or administrators of the deceased partner. And if any other debts due or owing from the said partnership shall remain unpaid, the surviving partner, on having such allowance as aforesaid, shall undertake to discharge the same within

calendar months, and shall enter into a bond with the executors or administrators of the deceased partner for that purpose, and also for the indemnity of the executors or administrators of the deceased partner against the same debts, and all costs, suits at law and in equity, by reason or on account thereof, and also the costs, charges, and expenses of any action or actions, suit or suits at law for the recovery of any debts due or owing to the said partnership. And the sum which, on the balance of the said partnership accounts, shall appear to be the clear residuc,

CHAP.  
VII.

FORM 108.  
BUSINESS  
CARRIED  
ON AFTER  
DEATH.

CHAP.  
VII.FORM 108.  
BUSINESS  
CARRIED  
ON AFTER  
DEATH.

or as the case shall require, the whole of the share of the executors or administrators of such deceased partner of and in the said partnership effects, and the valuation thereof, after all just deductions and allowances thereout shall be secured by the surviving partner, by his bond to the executors or administrators of the deceased partner, payable by instalments of £        at the end of every        calendar months from the time at which the said partnership shall have ceased as to profit and loss as aforesaid, and with interest at the rate of £        per cent. per annum on such part of the said sum as from time to time shall remain unpaid, and with a provision for the payment of all interest up to the time of discharging such respective instalments of the principal sum. And as soon as such valuation shall have been made, and the accounts finally settled, and the said bond or several bonds shall have been entered into, or at any time afterwards, the executors or administrators of the deceased partner, on the request and at the costs and charges of the surviving partner, his executors or administrators, shall make and execute to him or them an assignment of the share of the deceased partner of all the effects, debts, and sums of money then due, owing, and belonging to the said partners on account of the said partnership, with full power and authority to collect and receive all the debts then due and owing to the said partners on account of the said partnership, and on the expiration or other sooner determination of the said partnership, a notice of the determination of the same partnership shall be signed by both the partners, and inserted in the *London Gazette* and the newspapers, if either of the partners, his executors or administrators, shall require the same.

## 109.

*Provision for Determination of Partnership in Certain Events.*

Provided always and in case all or any part of the share of either of the said partners shall be taken in execution, or be attached or sequestered for any debt or debts owing or to be owing by him, or if either of the said partners shall become bankrupt, or shall be arrested or taken in execution and remain in custody for more than twenty-four hours, it shall be lawful for the other of the said partners to dissolve and determine the said partnership, and the same shall, upon notice in writing given by the same partner to the other of them, cease and determine in the same manner, and as near as may be in all respects upon the same terms, and the effects of the said partnership shall be disposed of, and the accounts relating to the same closed as if one of the said partners had actually died.

CHAP.  
VII.  
FORM  
109.  
PROVISION  
TO DETER-  
MINE PART-  
NERSHIP  
IN CERTAIN  
EVENTS.

## 110.

*Arbitration Clause (a).*

And it is hereby further declared and agreed, that if at any time during the said partnership, or after

FORM  
110.  
ARBITRA-  
TION  
CLAUSE.  
Arbitra-  
tion  
clause.

(a) A clause for reference of disputes to arbitration is generally inserted as a common form in partnership deeds, although, in case of dispute, such domestic tribunal is rarely found to be satisfactory. (5 Dav. Conv. 785.) Upon a proper submission of all the partners, a partnership may be dissolved by the award of an arbitrator (Heath v. Sansom, 4 B. & Ad. 172); and, on a reference of 'all matters in difference' between two partners, it was held that the arbitrator had power, by his award, to direct the partnership to be dissolved. (Green v. Waring, 1 Wm. Black. 475.)

CHAP.  
VII.FORM 110.  
ARBITRA-  
TION  
CLAUSE.

the dissolution or other sooner determination thereof, any dispute, doubt, or question shall arise between the said partners, or either of them, their or either of their executors or administrators, touching or concerning the business of the said partnership, or any covenant, agreement, clause, matter, or thing contained in these presents, or on the construction of the same, or respecting the transactions, profits, and losses of the business of the said partnership, or any one or more item or items of the accounts of the said partners, or any entry or entries relating to the same accounts, or touching or concerning the breach or non-performance of all and every or any or either of the clauses, articles, covenants, and agreements hereinbefore contained, or touching or concerning the right, the reasonableness, or the propriety of dissolving the present partnership: Then every such dispute, doubt, or question shall be referred to the arbitration of two indifferent persons, one to be named by the party or parties on one side of the matter in difference, and the other of them to be named by the party or parties on the other side of the matter in difference; or in case the party or parties on either side of the matter in difference shall refuse to join in such nomination, then both the said arbitrators to be named by the party or parties on the other side of the matter in difference: And that in case such two referees cannot agree on an award, then to the umpirage of such one person as the said two referees shall appoint by any writing under their hands: And that each such reference shall be made within forty days next after such dispute or question shall arise: And that the order or determination which shall be made by the said referees, or by their umpire, touch-

ing or concerning the premises referred to him or them, or any part thereof, shall be final and conclusive on the said parties respectively, so as such referees shall make their award in writing under their hands, or appoint an umpire within forty days next after each respective reference to them: And so as such umpire shall make his determination, in writing under his hand, within twenty days after he shall be appointed an umpire.

CHAP.  
VII.  
FORM 110.  
ARBITRA-  
TION  
CLAUSE.

## CHAPTER VIII.

## FORMS IN ANNUITY DEEDS.

111.

*Testatum where Annuity to an Individual.*

CHAP.  
VIII.  
FORM  
111.  
TESTATUM  
WHERE  
ANNUITY  
TO A  
PERSON.

Now this Indenture Witnesseth, that in pursuance of the said agreement, and in consideration of the sum of £            sterling, in notes of the Governor and Company of the Bank of England, payable to bearer on demand, to the said (*grantor*), now hereby paid by the said (*grantee*), the receipt of which said sum in such bank notes the said (*grantor*) doth hereby acknowledge, and therefrom for ever release the said (*grantee*), his heirs, executors, administrators, and assigns.

112.

*Testatum where Annuity in Trust for an Assurance Company.*

FORM  
112.  
TESTATUM  
WHERE  
ANNUITY  
TO COM-  
PANY.

Now this Indenture Witnesseth, that in pursuance of the said agreement, and in consideration of the sum of £            sterling, in notes of the Governor and Company of the Bank of England, payable to bearer on demand, to the said (*grantor*) now truly paid by the said            and            as the trustees or agents, and on behalf and with the proper money of the said Company, testified by an order or resolution,

entered for that purpose in the books of the proceedings of the said Company, the receipt of which said sum of £            in such bank notes the said (*grantor*) doth hereby acknowledge, and therefrom for ever release the said            and (*trustees*), their executors, administrators, and assigns, and all and every the directors, trustees, and proprietors of the said Company.

CHAP.  
VIII.

FORM 112.  
TESTATUM  
WHERE  
ANNUITY  
TO COM-  
PANY.

113.

*Declaration of Trust of Annuity for Insurance Company.*

And it is hereby declared and agreed, that the said annuity of £            is granted to the said and (*trustees*), their executors, administrators, and assigns, in trust for the said            Assurance Company (Society), and to be assigned or transferred and disposed of as the directors for the time being of the same Company (Society), or a competent number of them, according to the order and constitution of the same Company (Society) shall direct or appoint.

FORM  
113.  
DECLARA-  
TION OF  
TRUST..

114.

*Grant and Habendum where Annuity a Rent Charge.*

He the said (*grantor*) doth by these presents give, grant, and confirm unto the said (*grantee*), his executors, administrators, and assigns, one annuity or clear yearly sum of £            sterling, to be charged and chargeable upon and issuing and payable out of all (*parcels*), and their rights, members, and appurtenances, To have, hold, receive, and take the said annuity of £            unto the said (*grantee*), his executors, administrators, and assigns, henceforth during

FORM  
114.  
GRANT AND  
HABEN-  
DUM.  
Grant.

Haben-  
dum.

CHAP.  
VIII.  
FORM 114.  
GRANT AND  
HABEN-  
DUM.

the term of            years, if the said (*nominees*) or any or either of them so long live, the said annuity of £            to be paid to the said (*grantee*), his executors, administrators, or assigns, by equal quarterly portions upon the            day of            the            day of            the            day of            , and the            day of            in every year, without any deduction or abatement whatsoever, the first payment of the said annuity of £            to become due and be made on the            day of            now next ensuing, provided either of the said (*nominees*) shall be then living, and in case the survivor of the said (*nominees*) shall die during the said term of            years, and in the interval of any two of the said quarterly days so appointed for payment of the said annuity, and either before or after the said            day of            next, then such part of the said annuity of £            as shall be in proportion to the number of days which, inclusive of the day of the decease of such survivor shall have elapsed prior to his decease, and after the day of payment next, and immediately preceding that event, or as the case shall require, next after the day of the date of these presents, to be paid to the said (*grantee*), his executors, administrators, or assigns, immediately after the decease of such survivor of the said (*nominees*), and demand made thereof.

115.

*Powers of Distress and Entry.*

FORM  
115.  
POWERS OF  
DISTRESS  
AND  
ENTRY.

And the said (*grantor*) doth hereby also grant unto the said (*grantee*), his executors, administrators, and assigns, that from time to time, when and as often as the said annuity of £            , hereby granted or in-



tended so to be, or any part thereof, shall be wholly or partially in arrear for        days next after any of the days hereinbefore appointed for payment of the same, then and from time to time it shall be lawful for the said (*grantee*), his executors, administrators, and assigns, into and upon the said (*parcels*) hereby charged with the said annuity, or into and upon any part thereof, to enter and distrain for the same annuity, and all the arrears thereof, and the distress and distresses then and there found, to detain, manage, sell, and dispose of in the same manner in all respects as distresses for rents reserved upon leases for years may be detained, managed, sold, and disposed of, and as if the said annuity of £        hereby granted were a rent reserved upon a lease for years, to the intent that the said (*grantee*), his executors, administrators, or assigns, may thereby, therewith, or otherwise, be fully satisfied and paid the said annuity of £        , and all the arrears thereof, and all costs, charges, and expenses, to be occasioned by the non-payment thereof, at the days hereinbefore appointed for payment of the same. And the said (*grantor*) doth also grant unto the said (*grantee*), his executors, administrators, and assigns, that from time to time, when and as often as the said annuity of £        hereby granted, or intended so to be, or any part thereof, shall be wholly or partially in arrear for        days next after any of the said days hereinbefore appointed for payment of the same, then and from time to time as often as it shall so happen, and either upon or at any time after the expiration of the said        days, it shall be lawful for the said (*grantee*), his executors, administrators, and assigns (and although no legal or formal demand shall have been

CHAP.  
VIII.

FORM 115.  
POWERS OF  
DISTRESS  
AND  
ENTRY.

Power of  
distress.

Power of  
entry.

CHAP.  
VIII.  
FORM 115.  
POWERS OF  
DISTRESS  
AND  
ENTRY.

made of the said annuity), into and upon the said (*parcels*) hereby charged with the said annuity of £ , or into and upon any part thereof, in the name of the whole to enter, and the same (*parcels*) to have, hold, and enjoy, and the rents and profits thereof to receive and take to and for his and their own use and benefit until he and they shall thereby, therewith, or otherwise, be fully satisfied and paid the said annuity of £ , and all the arrears thereof, and also so much of the same annuity as from time to time shall grow due, during such time as the said (*grantee*), his executors, administrators, and assigns, shall continue in possession of the premises after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses, as shall be occasioned by the non-payment of the said annuity or any part thereof at the days aforesaid, and such possession when taken to be without impeachment of waste.

116.

*Demise of Term for Securing Annuity.*

FORM  
116.  
DEMISE OF  
TERM.

Grant.

Haben-  
dum.

And this indenture also witnesseth, that for further securing the said annuity of £ , he, the said (*grantor*) on the nomination of the said (*grantee*), (testified by his executing these presents), doth by these presents grant and demise unto the said (*trustee*), his executors, administrators, and assigns, all and singular the said (*parcels*) hereby charged or made chargeable with the said annuity of £ , hereby granted or intended so to be, and their rights, members, and appurtenances; To have and to hold the said (*parcels*) and premises hereby granted and demised, or intended so to be, unto the said (*trustee*),

his executors, administrators, and assigns, during the term of        years hence next ensuing, without impeachment of waste, at the yearly rent of one peppercorn upon the first day of January in each year if demanded : Nevertheless, upon the trusts and for the intents and purposes hereinafter expressed concerning the same.

CHAP.  
VIII.  
FORM 116.  
DEMISE OF  
TERM.

117.

*Demise of Leaseholds for Securing Annuity.*

And this Indenture further witnesseth, that, for further securing the said annuity of £       , he, the said (*grantor*), on the nomination of the said (*grantee*), (testified by his executing these presents), doth by these presents grant and demise unto the said (*grantee*), his executors, administrators, and assigns, all and singular the said leasehold        and hereditaments, hereby charged, or made chargeable, with the said annuity of £       , and the appurtenances ; To have and to hold the said leasehold        hereditaments and premises hereby demised, or intended so to be, unto the said (*trustee*), his executors, administrators, and assigns, for all the residue, except the last day of the said term of        years, granted by the hereinbefore recited indenture of lease, dated on or about the        day of        : Nevertheless, upon the trusts hereinafter expressed concerning the same.

FORM  
117.  
DEMISE OF  
LEASE-  
HOLDS.  
Grant.

Haben-  
dum.

118.

*Trusts of Term for Securing Annuity.*

And it is hereby declared and agreed, that the said term of        years is hereby granted, upon trust,

FORM  
118.  
TRUSTS OF  
TERM.

CHAP.  
VIII.FORM 118.  
TRUSTS OF  
TERM.For better  
securing  
annuity.To raise  
annuity by  
receipt of  
rents, or  
mortgage,  
or sale.

for better securing to the said (*grantee*), his executors, administrators, and assigns, the due and regular payment of the said annuity of £ , hereby secured to him, or them, as aforesaid: And upon this further trust, that in case and when and as often as the said annuity of £ , or any quarterly payment thereof, shall be in arrear, and unpaid, in the whole, or in part, by the space of days next after any one of the days or times hereinbefore appointed for payment thereof, the said (*trustee*), his executors, administrators, or assigns, do, and shall, by and out of the rents and profits of the said hereditaments and premises hereby granted, or demised, or intended so to be, or by mortgage or sale thereof, or of a competent part thereof, for all or any part of the said term of years, or by bringing actions against, or making distresses upon all and every, or any one or more of the present or future tenants, of the said hereditaments and premises, for recovery of the rents, then in arrear, or by making entries upon the same hereditaments and premises, or by all and every, or any one or more of the said ways and means, or by any other lawful and reasonable ways and means whatsoever, levy and raise such arrears of the said annuity of £ , and proportional part thereof, as from time to time shall become due and remain unpaid, together with all such damages, costs, charges, and expenses as the said (*trustee*), his executors, administrators, or assigns shall incur, sustain, or be put unto by reason of the nonpayment of the said annuity of £ , or any part thereof, together with the costs, charges, and expenses attending the execution of the trusts of the said term of years: And upon this further trust, that the said

(*trustee*), his executors, administrators, or assigns, do and shall, in the first place, retain and reimburse to and for himself and themselves the costs, charges, and expenses of, and attending the execution of the trusts hereby reposed in him and them: And, in the next place, pay and satisfy to the said (*grantee*), his executors, administrators, or assigns [or the said Company, and to the said (*trustee*), his executors, administrators, or assigns, as their trustee or trustees] all the arrears of the said annuity of £        and proportional part thereof, and all costs, charges, damages, and expenses, which he and they shall have incurred, suffered, borne, sustained, and laid out, by reason or on account of the nonpayment of the said annuity of £        or any part thereof, or in or about recovering and enforcing the payment of the same: And upon this further trust, that in the meantime and until the said annuity of £        or some quarterly payment thereof, shall be in arrear and unpaid in the whole or in part by the space of        days next after any one of the days or times hereby appointed for payment of the same, and also, from time to time, when and as often as all arrears of the said annuity of £        and the said costs, charges, damages, and expenses shall be raised or fully satisfied and paid, the said (*trustee*), his executors, administrators, and assigns, do and shall permit and suffer the said (*grantor*), his heirs, or assigns, to receive and take the rents and profits of the same hereditaments and premises, to and for his and their own use and benefit: And upon this further trust, that the said (*trustee*), his executors, administrators, and assigns, do and shall, from time to time, after paying the said annuity of £        when and as the

CHAP.  
VIII.

FORM 118.  
TRUSTS OF  
TERM.

To pay  
costs and  
arrears of  
annuity.

Meantime  
to allow  
grantor to  
receive  
rents,

CHAP.  
VIII.FORM 118.  
TRUSTS OF  
TERM.And pay  
surplus  
moneys to  
grantor.

same shall become due and payable, and also after paying, deducting, and retaining such costs, charges, damages and expenses as aforesaid, pay to the said (*grantor*), his executors, administrators, or assigns, or to whom he or they shall direct or appoint, the money (if any) which from time to time shall remain in the hands of the said (*trustee*), his executors, administrators, or assigns, unapplied to any of the purposes aforesaid.

## 119.

*Covenant for Payment where Annuity Granted as  
Rent-charge.*

FORM  
119.  
COVENANT  
WHERE  
ANNUITY  
IS A RENT-  
CHARGE.

And the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and assigns, that he the said (*grantor*), his heirs, executors, or administrators, shall and will from time to time truly pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, the said annuity of £ , and also such proportional part thereof as aforesaid, free and clear from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the days and in manner hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents.

## 120.

*Covenant for Payment of Annuity where same not a Rent-charge.*

He, the said (*grantor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and assigns, that he, the said (*grantor*), his heirs, executors, or administrators, shall and will from time to time during the term of        years, to be computed from the day of the date of these presents, if (*nominees*), or any or either of them shall so long live, truly pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, one annuity or yearly sum of £        sterling by equal quarterly portions, on the        day of       , the        day of       , the        day of       , and the        day of        in every year, without any deduction or abatement whatsoever, and shall and will make the first payment of the said annuity of £        on the        day of        now next ensuing, provided either of the said

and (*nominees*) shall be then living, and also in case the survivor of the said        and (*nominees*) shall die during the said term of        years, and either before the said        day of        next, or after that day, and in the interval of any two of the said quarterly days so appointed for payment of the said annuity, then shall also pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, immediately after the decease of such survivor of the said        and (*nominees*) and demand made thereof, such part of the said annuity

CHAP.  
VIII.  
FORM  
120.  
COVENANT  
WHERE  
ANNUITY  
NOT A  
RENT-  
CHARGE.

CHAP.  
VIII.  
FORM 118.  
TRUSTS OF  
TERM.  
And pay  
surplus  
moneys to  
grantor.

same shall become due and payable, and also after paying, deducting, and retaining such costs, charges, damages and expenses as aforesaid, pay to the said (*grantor*), his executors, administrators, or assigns, or to whom he or they shall direct or appoint, the money (if any) which from time to time shall remain in the hands of the said (*trustee*), his executors, administrators, or assigns, unapplied to any of the purposes aforesaid.

## 119.

*Covenant for Payment where Annuity Granted as Rent-charge.*

FORM  
119.  
COVENANT  
WHERE  
ANNUITY  
IS A RENT-  
CHARGE.

And the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and assigns, that he the said (*grantor*), his heirs, executors, or administrators, shall and will from time to time truly pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, the said annuity of £ , and also such proportional part thereof as aforesaid, free and clear from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the days and in manner hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents.



## 120.

*Covenant for Payment of Annuity where same not a Rent-charge.*

He, the said (*grantor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and assigns, that he, the said (*grantor*), his heirs, executors, or administrators, shall and will from time to time during the term of        years, to be computed from the day of the date of these presents, if (*nominees*), or any or either of them shall so long live, truly pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, one annuity or yearly sum of £        sterling by equal quarterly portions, on the        day of        , the        day of        , the        day of        , and the        day of        in every year, without any deduction or abatement whatsoever, and shall and will make the first payment of the said annuity of £        on the        day of        now next ensuing, provided either of the said

and (*nominees*) shall be then living, and also in case the survivor of the said        and (*nominees*) shall die during the said term of        years, and either before the said        day of        next, or after that day, and in the interval of any two of the said quarterly days so appointed for payment of the said annuity, then shall also pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, immediately after the decease of such survivor of the said        and (*nominees*) and demand made thereof, such part of the said annuity

CHAP.  
VIII.FORM  
120.COVENANT  
WHERE  
ANNUITY  
NOT A  
RENT-  
CHARGE.

CHAP.  
VIII.  
FORM 120.  
COVENANT  
WHERE  
ANNUITY  
NOT A  
RENT-  
CHARGE.

of £            as shall be in proportion to the number of days which, inclusive of the day of the decease of such survivor shall have elapsed of the current quarter of a year during which such death shall happen and without any deduction or abatement whatsoever.

121.

*Covenants for Title to Grant Annuity.*

FORM  
121.  
COVEN-  
ANTS FOR  
TITLE.  
Good right  
to subject  
and  
charge.

And he, the said (*grantor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and assigns, that he the said (*grantor*) now hath in himself good right or full power and lawful and absolute authority by these presents to subject and charge all the said            and premises to and

Also to  
demise.

with the payment of the said annuity of £            and the powers and remedies hereby given for enforcing payment thereof: And also to demise the same            and premises with the appurtenances unto the said (*trustee*), his executors, administrators, and assigns, for the said term of            years

Quiet en-  
joyment.

upon the trusts and for the purposes aforesaid, and according to the true intent and meaning of these presents: And also that the said            and premises hereby charged or made chargeable with the said annuity of £            shall from time to time continue and be subject to the payment of the said annuity of £            , and the said trusts and powers

Freedom  
from  
incum-  
brances.

and remedies for distress and entry, and be of sufficient value for the payment of the said annuity of £            and all the arrears thereof, over and beyond all other charges and incumbrances affecting the premises: And, moreover, that he, the said

(*grantor*), his heirs, executors, and administrators, and all persons rightfully claiming or to claim by, from, under or in trust for him or them, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*grantee*), his executors, administrators, or assigns, and at the costs and charges of the said (*grantor*), his executors, administrators, or assigns, make, do, and execute all such further and other lawful and reasonable acts, deeds, and assurances in the law for further, better, more lawfully and perfectly, and absolutely or satisfactorily granting and assuring the said annuity of £        hereby granted or intended so to be, with such powers and remedies as aforesaid, unto the said (*grantee*), his executors, administrators, and assigns, in manner aforesaid: And, also, for demising or otherwise assuring the said        and premises hereby demised or intended so to be, with the appurtenances unto the said (*trustee*), his executors, administrators, and assigns, for all the then residue of the said term of        years: Upon the trusts and for the intents and purposes aforesaid, and according to the true intent and meaning of these presents, as by the said (*grantee*), his executors, administrators, or assigns, or his or their counsel in the law shall be reasonably devised or advised and required, and be tendered to be made, done, and executed.

CHAP.  
VIII.FORM 121.  
COVEN-  
ANTS FOR  
TITLE.  
Further  
assurance.

122.

*Covenant to Insure.*

And the said (*grantor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his executors, administrators, and

FORM  
122.  
COVENANT  
TO INSURE.

CHAP.  
VIII.  
FORM 122.  
COVENANT  
TO INSURE.

assigns, that the said (*grantor*) shall and will, at all times hereafter during his natural life, in case the said annuity or yearly sum of £                      , or any part thereof, shall so long continue payable, appear in person, upon having reasonable notice thereof, at any office or place of insurance in London or Westminster, and shall and will send to any such office or place of insurance a notice in writing of his place of abode, together with satisfactory vouchers and certificates of his being alive, and of the state of his health, and shall do and perfect all such other matters and things as may be required of him by the said (*grantor*), his executors, administrators, or assigns, in order that the said (*grantee*), his executors, administrators, or assigns, may insure, and keep insured, the life of the said (*grantor*): And also that the said (*grantor*) shall not at any time or times hereafter, during the continuance of the said annuity of £                      , or any part thereof, upon this security go upon the seas, or leave or depart from Great Britain, without first applying at the office or offices where any policy or policies shall be effected by the said (*grantee*), his executors, administrators, or assigns, upon the life of the said (*grantor*), and obtaining from such office or offices leave or permission for such his departure: And further, that in case the said (*grantor*) shall, upon any occasion whatever, go upon the seas, or leave or depart from Great Britain, whereby the said (*grantee*), his executors, administrators, or assigns, shall be put to any extra expense in insuring, or keeping insured, the life of the said (*grantor*), then and in such case, and as often as the same may happen, the said (*grantor*), his executors or administrators, shall and will truly pay, or cause to be paid, unto the said

(*grantee*), his executors, administrators, or assigns, all such additional premium or premiums, within the space of one calendar month next thereafter, in addition to the said annuity or yearly sum: And further, that he, the said (*grantor*) shall not, nor will at any time or times hereafter, do any act or thing whatsoever, which shall or may in anywise impeach or render void the policy or policies of insurance to be effected by the said (*grantee*), his executors, administrators, or assigns, on the life of the said (*grantor*) as aforesaid: And it is hereby declared and agreed, that in default of any such payments as last aforesaid being so made by the said (*grantor*), the same shall and may from time to time be retained and paid by the said (*grantee*), his executors, administrators, or assigns, under the trusts hereinbefore declared of the hereditaments hereby charged with the said annuity as aforesaid.

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VIII.

FORM 122.  
COVENANT  
TO INSURE.

123.

*Proviso for Repurchase.*

Provided also, and it is hereby expressly declared and agreed, that in case the said (*grantor*), his executors, administrators, or assigns, shall at any time after the            day of            18            , be desirous of repurchasing the said annuity of £            , and shall give to the said (*grantee*), his executors, administrators, or assigns, three calendar months' notice in writing of such his or their desire, and, upon the expiration of the said notice, shall truly pay unto the said (*grantee*), his executors, administrators, or assigns, the sum of £            , and also the money which shall be then due and owing to the said (*grantee*), his executors, administrators, or assigns, for or on account

FORM  
123.

PROVISO  
FOR RE-  
PURCHASE.

CHAP.  
VIII.FORM 123.  
PROVISO  
FOR RE-  
PURCHASE.

of the said annuity of £ , and also a proportional part of the said annuity up to and inclusive of the day or time of paying the said sum of £ , and likewise the costs, charges, and expenses of the said (*trustee*), his executors, or assigns, then the said (*grantee*), his executors, administrators, or assigns, shall or will accept and take the said sum of £ as and for the price of repurchase, and in satisfaction and full discharge of the said annuity of £ , and immediately after such repurchase, the said annuity hereby granted or secured, or intended so to be; shall cease, determine, and be void, and, subject and without prejudice to any such sale or mortgage as aforesaid, the term of years hereby granted, and all other securities for the same annuity, shall cease and be void, to all intents and purposes whatsoever, and satisfaction shall be entered up for the said judgment, yet so that every or any such act, deed, matter, or thing, shall be at the costs and charges in all things of the said (*grantor*), his executors, administrators, or assigns, and that, for doing thereof, the said (*grantee*), his executors, administrators, or assigns, and the said (*trustee*), his executors, administrators, or assigns, shall not be required to go from his or their residence or abode.

124.

*Defeazance to Warrant of Attorney. (a)*

The above warrant of attorney is given as a security collaterally with an Indenture bearing even date herewith, and made between (*grantor*) of the one part, and (*grantee*) of the other part, for securing an annuity of £ , which hath been granted by the said (*grantor*) unto the said (*grantee*) for the term of years, if (*nominee*), of , in the county of , so long live, and the sole and *bonâ fide* consideration for the purchase of the said annuity was the sum of £ , and which sum was paid to the said (*grantor*) by the said (*grantee*) in notes of the Bank of England, immediately before the execution of the said Indenture, and the same annuity is to be paid during the said term of years, if the said (*nominee*) so long live, by equal quarterly portions, on the day of , the day of , the day of , and the day of in every year, without any deduction whatsoever, the first payment of the said annuity to become due and

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FORM  
124.  
DEFEAZ-  
ANCE.

(a) An attorney of one of the superior courts, nominated by the party and attending at his request, must explain the nature and effect of the warrant of attorney, and the same or a copy thereof must be filed in the Court of Queen's Bench within 21 days after the execution thereof, and the defeazance must be written on the same paper or parchment as the warrant, otherwise the same will be void. (The Debtors Act, 1869, 32 & 33 Vict. c. 62, ss. 24-26.)

Formali-  
ties on  
execution  
of warrant  
of at-  
torney.

A warrant of attorney affords the most summary remedy that a debtor can place in the hands of his creditor, since it entitles such creditor to enter up judgment without the intermediate steps necessary for obtaining it in an adverse suit, and enables him, by means of such judgment, to issue execution against the person or property of the debtor. (9 Byth. & Jarm. 563 n., 1st ed.)

Summary  
remedy  
thereby  
afforded.

CHAP.  
VIII.  
FORM 124.  
DEFEAZ-  
ANCE.

be made on the       day of       next, provided the said (*nominee*) shall be then living; and in case the said (*nominee*) shall die during the said term of years, or between or in the interval of any two of the said quarterly days of payment, and either before or after the said       day of       next, then such part of the said annuity of £       as shall be in proportion to the number of days which, inclusive of the day of the decease of the said (*nominee*), shall have elapsed prior to his decease, and after the quarterly day for payment next and immediately preceding that event, or, as the case shall require, next after the day of the date of the said indenture, to be paid by the said (*grantor*) to the said (*grantee*), his executors, administrators, or assigns, immediately after the decease of the said (*nominee*), and demand made thereof: And it is by the said indenture, and it is also hereby declared, that no execution shall be issued or taken out upon the judgment to be entered up under the above warrant of attorney, unless or until the whole or any part of the same quarterly or other portion of the said annuity of £       shall be in arrear thirty days next after any or either of the days hereinbefore appointed for payment thereof, but that, in case any quarterly portion of the said annuity of £       shall be in arrear for thirty days next after any or either of the days so appointed for payment thereof, then execution may be issued on the said judgment against the said (*grantor*), his executors or administrators, and thereupon the arrears of the said annuity, sheriff's poundage, officer's fees, and all other usual and incidental expenses, may be levied and taken: And also, that it shall not be necessary for the said (*grantee*), his executors, administrators, or assigns,



to revive, or cause to be revived, the judgment to be entered up under the said warrant of attorney, or do any act to keep the same on foot, although the same judgment may have been entered up for upwards of one year, or sue out any writ of scire facias upon any account whatsoever : And furthermore, that after the determination of the said annuity, and full payment to the said (*grantee*), his executors, administrators, or assigns, of the said annuity of £           , and the proportional part thereof, and all the arrears thereof, up to the day of the decease of the said (*nominee*), and all such costs, charges, and expenses as the said (*grantee*), his executors, administrators, or assigns, may have incurred, borne, or sustained, by reason of the non-payment of the said annuity, he, the said (*grantee*), his executors, administrators, or assigns, shall and will, on the request and at the costs and charges of the said (*grantor*), his heirs, executors, administrators, and assigns, acknowledge satisfaction upon the record of the said judgment in due form of law, and do any further or other act, matter, or thing, which may be reasonably required for releasing and extinguishing all right and remedy under the said judgment, and all executions thereupon, so that for the doing thereof the said (*grantee*), his executors, administrators, or assigns, shall not be compelled or compellable to travel from the place or places of his or their residence or abode.

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VIII.  
FORM 124.  
DEFEAZ-  
ANCE.

## CHAPTER IX.

## MISCELLANEOUS FORMS.

125.

*Covenants Joint and Several.*

CHAP.  
IX.  
FORM  
125.  
COVEN-  
ANTS JOINT  
AND  
SEVERAL.

And the said            and            do for themselves, their heirs, executors, and administrators jointly, and each of them doth for himself, his heirs, executors, and administrators, severally hereby covenant, &c.

126.

*Several Covenants.*

FORM  
126.  
SEVERAL  
COVEN-  
ANTS.

And the said            , so far as relates to his own acts and deeds, doth for himself, his heirs, executors, and administrators, and the said            , so far as relates to his own acts and deeds, doth for himself, his heirs, executors, and administrators, hereby covenant, &c.

127.

*Several Covenants, where Covenantors very Numerous.*

FORM  
127.  
SEVERAL  
COVEN-  
ANTS,  
WHERE A  
NUMBER.

And each of the said            and            , so far as relates to his or her acts and deeds only, and not for the acts and deeds of the others or other of them, doth for himself and herself only, and his or her own heirs, executors, and administrators, and in no respects otherwise, hereby covenant, &c.

## 128.

*Covenants by Trustees for Sale, but beneficially Interested in some Manner in the Purchase-money.*

And the said                      and                      , each of them covenanting only for himself, his heirs, executors, and administrators, and for the title, possession, and further assurance of the said hereditaments, so far only as the said                      and                      are respectively interested in the premises, or the consideration money thereof, do hereby covenant, &c.

CHAP.  
IX.FORM  
128.COVEN-  
ANTS BY  
TRUSTEES  
FOR SALE.

## 129.

*Covenants by Coparceners.*

And the said                      , as to her share of and in the said hereditaments, doth for herself, her heirs, executors, and administrators, and for her and their acts and deeds, and the said                      , as to her share, &c., doth hereby covenant, &c.

FORM  
129.COVEN-  
ANTS BY  
COPAR-  
CENERS.

## 130.

*Covenants by Husband for Self and Wife.*

And the said                      doth hereby, for himself, his heirs, executors, and administrators, and for the said                      , his wife (she hereby consenting thereto), covenant, &c.

FORM  
130.COVEN-  
ANTS BY  
HUSBAND.

## 131.

*Covenants by Two several Vendors each for Undivided Moiety.*

And the said                      , so far as relates to or concerns the said one undivided moiety or equal half part or share of the said hereditaments hereby as-

FORM  
131.COVEN-  
ANTS BY  
SEVERAL  
VENDORS.

CHAP.  
IX.  
FORM 131.  
COVEN-  
ANTS BY  
SEVERAL  
VENDORS.

sured, or intended so to be, and the title, right to convey, quiet enjoyment, freedom from encumbrances, and further assurance of the same, doth for himself, his heirs, executors, and administrators: And the said , so far as relates to or concerns the other undivided moiety or equal half-part or share of, &c., and the title, right to convey, quiet enjoyment, freedom from encumbrances, and further assurances of the same, doth for himself, his heirs, executors, and administrators, covenant, &c.

## 132.

*Covenants for Title by Joint Tenants.*

FORM  
132.  
COVEN-  
ANTS BY  
JOINT  
TENANTS.

And each of them, the said and , for himself, his heirs, executors, and administrators (and so that for or in respect of any deed, matter, or thing, not being the act or default of himself respectively, or his respective heirs, or any person or persons claiming by, through, under, or in trust for him: He respectively, or his respective heirs, executors, or administrators, may not be answerable in damages beyond the value of an equal third part of the said hereditaments hereby assured or intended so to be), doth hereby covenant, &c.

## 133.

*Covenants for Title by Tenants in Common.*

FORM  
133.  
COVEN-  
ANTS BY  
TENANTS  
IN COM-  
MON.

And the said , for himself, his heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself, his heirs, executors, and administrators, and as regards only his own undivided half part of the hereditaments

hereby assured (and so that for or in respect of any deed, matter, or thing, not being the act or default of himself or his heirs, or any person or persons claiming by, through, under, or in trust for him: He, the said

, his heirs, executors, or administrators, may not be answerable in damages beyond the value of one equal half part of the said hereditaments hereby assured or intended so to be): And she, the said , for herself, her heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of herself, her heirs, executors, and administrators, and as regards only the undivided half part of the said hereditaments, late of the said , wherein she hath such life estate as aforesaid (and so that for or in respect of any deed, matter, or thing, not being the act or default of herself, or any person or persons claiming by, through, under, or in trust for her: She, her heirs, executors, or administrators, may not be answerable in damages beyond the value of her life estate in such undivided moiety): And each of them, the said and , for himself and herself, and his and her respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself or herself respectively, or his or her respective heirs, executors, and administrators, and as regards only the said undivided moiety, late of the said (and so that for or in respect of any deed, matter, or thing, not being the act or default of himself or herself respectively, or his or her respective heirs, or any person or persons claiming by, through, under, or in trust for him or her respectively: He or she respectively, or his or her respective heirs, executors, or administrators, may not be answerable in damages beyond the value

CHAP.  
IX.

FORM 133.  
COVEN-  
ANTS BY  
TENANTS  
IN COM-  
MON.

CHAP. of one equal fourth part of the said moiety of the said  
IX. , expectant on, or subject to the said life  
FORM 133. estate of the said ), doth hereby covenant, &c.

COVEN-  
ANTS BY  
TENANTS  
IN COM-  
MON.

134.

*Covenants for Title by Parties entitled to Purchase-  
money.*

FORM  
134.  
COVEN-  
ANTS BY  
PARTIES  
ENTITLED  
TO MONEY.

And each of the said and , for himself, his heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself respectively, or his respective heirs, executors, or administrators, or any person or persons claiming by, through, under, or in trust for him respectively: And as to the said (*husband*), also as to and concerning the acts, deeds, and defaults of the said , his wife, and her heirs, and of any person or persons claiming by, through, under, or in trust for her (and so that for or in respect of any deed, matter, or thing, not being the act or default of the said covenanting party respectively, or his respective heirs, or any person or persons claiming by, through, under, or in trust for him respectively: And as to the said (*husband*), not being the act, deed, or default of the said , his wife, or her heirs, or any person or persons claiming by, through, under, or in trust for her, the said covenanting party respectively, or his respective heirs, executors, or administrators, may not be answerable in damages beyond one equal fourth part of the value of the fee simple of the said hereditaments), doth hereby covenant with the said (*purchaser*), his heirs and assigns, in manner following (that is to say): That, &c.

## 135.

*Covenant for Production of Deeds on the Part of  
Several Persons.*

And the said , for himself, his heirs, executors, administrators, and assigns (and as to only the deeds, evidences, and writings specified in the first schedule to these presents, and the acts, deeds, and defaults relative thereto): And the said , &c. (and so on according to the number of covenantors and schedules.)

CHAP.  
IX.  
FORM  
135.  
COVEN-  
ANT BY  
SEVERAL  
FOR PRO-  
DUCTION.

## 136.

*Reservation of Royalty.*

And yielding and paying yearly, and every year during the said term hereby granted unto the said lessor, his heirs and assigns, by way of additional rent, the rent or royalty of , for every yard of clay which the said lessee, his executors, administrators, or assigns, may have gotten or obtained in each respective year during the said term from and out of the said demised premises, the said amount or further rent or royalty to be ascertained on the last Monday which shall leave a clear interval of at least seven days before the expiration of such respective year (such Monday not being reckoned as one of the same days): and when and as often as in any year during the said term no clay shall have been gotten or obtained, then yielding and paying unto the said lessor, his heirs or assigns, the additional rent of £ for such year respectively (the same being the amount of royalty which would have been payable

FORM  
136.  
RESERVA-  
TION OF  
ROYALTY.

CHAP.  
IX.  
FORM 136.  
RESERVA-  
TION OF  
ROYALTY.

for such year in case      yards of clay had been gotten or obtained in such year, after the rate of      for each of such      yards of clay): or when and as often as in any year during the said term less than      yards of clay shall have been gotten or raised, then and in addition to the royalty which, at the rate of      for every yard of clay raised in that year would be so payable by way of royalty under the reservation aforesaid, yielding and paying unto the said lessor, his heirs or assigns, by way of additional rent for that year, such a sum of money for that year as will make up the sum of £      , being the amount of royalty which would have been payable for that year in case      yards of clay had actually been raised in such year, after the rate of      for every yard of such      yards of clay: such additional rents or royalties beyond the said yearly rent of £      hereinbefore reserved respectively to become due and be paid on the      day of      next, and all additional rents and royalties to be paid free and clear from all deductions and abatements as aforesaid.

137.

*Covenant to Pay Rents, Royalties, and Taxes.*

FORM  
137.  
COVENANT  
TO PAY  
RENTS AND  
ROYAL-  
TIES.

And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor, his heirs and assigns, that the said lessee, his executors, administrators, or assigns, shall and will truly pay, or cause to be paid, unto the said lessor, his heirs or assigns, the several yearly rents and royalties hereby reserved and made payable on the days or times, and in manner hereinbefore appointed for payment of the same respectively, without any deduc-



tion or abatement whatsoever, and according to the true intent and meaning of these presents: And also that the said lessee, his heirs, executors, administrators, or assigns, shall and will bear, pay, and discharge all the land-tax, sewers, and drainage rates and assessments, and all other taxes, rates, assessments, and impositions, whether parliamentary, parochial, or otherwise, which now are, or which during the said term hereby granted shall become payable for or in respect of the said premises, or any part thereof.

CHAP.  
IX.  
FORM 137.  
COVENANT  
TO PAY  
RENTS AND  
ROYALTIES.

## 138.

*Covenant to Keep proper Books of Account as to  
Royalties.*

And also that the said lessee, his executors, administrators, or assigns, shall and will from time to time, at his and their own costs and charges, provide and keep proper books for the entry of the number of yards of clay which from time to time shall be dug out of or obtained from the said hereby demised premises, and make proper entries therein of the *bonâ fide* number of yards of clay which shall be so obtained as aforesaid, and shall and will from time to time, during the continuance of the said term hereby granted, furnish the said lessor, his heirs or assigns, an extract or statement of the number of yards of clay which during the current year may have been gotten or obtained from the said hereby demised premises, and of the amount which, by way of rent or royalty as aforesaid, may be then payable to the said lessor, his heirs or assigns, by virtue of the provisions aforesaid, and shall and will from time to time, upon the request of the said lessor, his heirs or assigns, furnish

FORM  
138.  
COVENANT  
TO KEEP  
BOOKS OF  
ACCOUNT.

CHAP  
IX.

FORM 138.  
COVENANT  
TO KEEP  
BOOKS OF  
ACCOUNT.

all such statements or explanations as he or they may require, touching or concerning the number of yards of clay which shall be so gotten or obtained from the said hereby demised premises, and produce all such books of account unto, and suffer the same to be inspected and examined by the said lessor, his heirs or assigns, and allow him or them to take copies or extracts of or from the same, and especially that the said lessee, his executors, administrators, or assigns, shall and will on such Monday as may happen after such interval as aforesaid preceding to the expiration of each year of the term hereby granted, join and concur with the said lessor, his heirs or assigns, or his or their agent, in making out and ascertaining the quantity which during the then current year may have been gotten or obtained from the said demised premises: and thereupon the said lessee, his executors, administrators, or assigns, shall and will personally, or by his or their agent, sign the account to be so settled and ascertained, and deliver the same unto the said lessor, his heirs or assigns.

139.

*Covenant to Repair.*

FORM  
139.  
COVENANT  
TO REPAIR.

And also that the said lessee, his executors, administrators, or assigns, shall and will from time to time during the said term hereby granted, well, substantially, and effectually repair, amend, and keep in good order, repair, plight, and condition, the said dwelling-house, with the edifices, buildings, sheds, walls, fences, drains, sinks, sewers, and appurtenances thereunto belonging, and also the said close of land, tile-yard, and other premises hereby demised, or intended so to be.

## 140.

*Covenant that an Infant Heir, when of Age, shall Execute Deed.*

And the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*grantee*), his heirs and assigns, that the said (*infant*), when he shall have attained his age of twenty-one years, shall or will, upon the request and at the costs and charges of the said (*grantee*), his heirs or assigns, execute these presents.

CHAP.  
IX.FORM  
140.COVENANT  
THAT IN-  
FANT SHALL  
EXECUTE  
DEED.

## 141.

*Form of Commencement of a Joint and Several Bond (a).*

Know all men by these presents, that we , of, &c., and , of, &c. (*obligors*), are, and each of us is held and firmly bound to , of, &c. (*obligee*), his executors and administrators, in the sum of £ of lawful British money, to be paid to the said (*obligee*), or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made we bind ourselves and each of us, his heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this day of , in the year of our Lord .

FORM  
141.  
COM-  
MEN-  
CEMENT OF  
BOND.

(a) Bonds are every day falling more and more into disuse, and the recent abolition of the distinction between specialty and simple contract debts in the administration of assets in the Court of Chancery (32 & 33 Vict. c. 46) will further tend to make them become obsolete. But bonds are still taken by the force of custom or habit, by or on behalf of many public bodies, and in some mercantile transactions, and under the provisions of certain Acts of Parliament. (5 Dav. Conv. 733.)

Bonds now  
rarely  
taken.

## 142.

*Memorandum of Acknowledgment of a Deed by a Married Woman.*

CHAP.  
IX.  
FORM  
142.  
MEMORAN-  
DUM OF  
ACKNOW-  
LEDGMENT.

This deed marked A        was this day produced before us, and acknowledged by        therein named to be her act and deed, previous to which acknowledgment the said        was examined by us separately and apart from       , her husband, touching her knowledge of the contents of the said deed, and her consent thereto, and declared the same to be freely and voluntarily executed by her. Witness our hands this        day of       , 18       .

## 143.

*Certificate of Acknowledgment of a Deed by a Married Woman (a).*

FORM  
143.  
CERTIFI-  
CATE OF  
ACKNOW-  
LEDGMENT.

These are to certify that on the        day of       , 18       , before us,        and       , two of the perpetual commissioners appointed for taking the acknowledgment of deeds by married women, pursuant to an Act passed in the third and fourth years of the reign of His Majesty King William IV., intituled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance,' appeared personally       , the wife of       , of, &c., and produced a certain indenture marked A       ,

Affidavit  
of verifi-  
cation.

(a) The affidavit of verification must, under a rule of Michaelmas Term, 1862, be in the first person and divided into paragraphs, and made by an attorney or one of the commissioners, as to all the facts; or as to identity and age, the facts may be deposed to by a person not an attorney. (2 Rouse, Pr. Conv. Addendum.)

dated the       day of       , 18       , and made between, &c., and acknowledged the same to be her act and deed: And we do hereby certify that the said       was at the time of acknowledging the said indenture of full age and competent understanding, and that she was examined by us apart from the said       , her husband, touching her knowledge of the contents of the said Indenture, and that she freely and voluntarily consented thereto, and declared the same to be freely and voluntarily executed by her. Witness our hands this       day of       , 18       .

CHAP.  
IX.

FORM 143.  
CERTIFICATE OF  
ACKNOWLEDGMENT.

## CHAPTER X.

## RECITALS (a).

i44.

*Recital of Marriage.*

CHAP. X.      Whereas a marriage has been agreed upon and is  
 FORM 144.      intended shortly to be solemnised between the said  
 and      (*intended husband and wife*).  
 RECITAL OF MARRIAGE.

145.

*Recital that Lady is entitled to Leasehold Messuage.*

FORM 145.      And whereas the said      (*intended wife*) is pos-  
 RECITAL OF POSSESSION OF MESSU-AGE.      sessed of the leasehold messuage or tenement situate  
 or distinguished as No.      in the parish of      ,  
 in the county of      , which was granted for the  
 term of      years, at the yearly rent of £      , by an  
 indenture dated on or about the      day of      ,  
 and made between      of the one part, and  
 of the other part.

(a) The present chapter of course is not intended to comprise a complete or even an adequate collection of recitals, but only to indicate to the student and junior practitioner the mode in which particular facts or circumstances are recited in deeds.

## 146.

*Recital that Intended Husband should Covenant to Pay a Sum of Money.*

And whereas, upon the treaty for the said intended marriage, it was also agreed that the said (*intended husband*) should enter into the covenant hereinafter contained for payment of the sum of £ sterling, to be holden and applied in manner hereinafter expressed.

CHAP.  
X.  
FORM  
146.  
RECITAL OF  
INTENDED  
COVENANT.

## 147.

*Recital that Navigation Bonds are intended to be Assigned and also Transferred in Form Prescribed.*

And whereas, it is intended that the said navigation bonds of the said (*intended wife*) shall be vested in the said and (*trustees*), not only by the assignment thereof hereinafter contained, but also by a transfer of the same in the form prescribed for such like transfer in the books kept for that purpose.

FORM  
147.  
RECITAL OF  
TRANSFER  
OF NAVI-  
GATION  
BONDS.

## 148.

*Recital that Policy has been Effected.*

Whereas, by means of a policy, dated the day of , and numbered , the said has effected an assurance on his own life for the whole term thereof, with the , for the sum of £ , at the annual premium of £ , payable yearly on the day of in each year, and which premium has been paid up to the day of .

FORM  
148.  
RECITAL OF  
POLICY.

## 149.

*Recital that Copyhold Hereditaments have been  
Surrendered by way of Mortgage.*

CHAP.  
X.  
FORM  
149.  
RECITAL OF  
SUR-  
RENDER.

And whereas, in pursuance and part performance of the hereinbefore recited agreement, as relates to the said copyhold hereditaments, and for the considerations hereinafter expressed, the said (*mortgagor*) has on the day of the date, and immediately before the execution of these presents out of court, surrendered all and singular the said copyhold pieces or parcels of land, messuages, and hereditaments, and their appurtenances: To the use of the said (*mortgagee*), his heirs and assigns, at the will of the lord, according to the custom of the said manor, and by and under the rents, suits, and services therefore due and of right accustomed, subject to a like proviso for redemption as hereinafter contained, and with and under the powers and provisions hereinafter expressed.

## 150.

*Recital of Intention to Appoint Attorneys to Execute  
Deed.*

FORM  
150.  
RECITAL OF  
APPOINT-  
MENT OF  
ATTOR-  
NEYS.

And whereas, inasmuch as the said (*principal*) is now resident at \_\_\_\_\_ and cannot personally execute the said contemplated indenture, and it is deemed advisable that the same should not be sent from England to him for execution from the risk of its being lost, he has determined to constitute and appoint \_\_\_\_\_ of, &c., and \_\_\_\_\_ of, &c., or the survivor of them, to be his attorney or attorneys, for the purpose of executing the same.



## 151.

*Recital of Contract for Sale of Annuity to Trustees of Assurance Company.*

Whereas the said (*grantor*) has contracted with the said                      and                      , as trustees for and on behalf of the                      Company, to grant to them the said                      and                      , their executors, administrators, and assigns, a clear annuity of £                      , for the term of                      years, if (*nominees*), any or either of them shall so long live, and the sole and *bonâ fide* consideration for the purchase of the said annuity is the sum of £                      sterling.

CHAP.  
X.  
FORM  
151.  
RECITAL OF  
CONTRACT  
FOR  
ANNUITY.

## 152.

*Recital of Bond for Securing Annuity.*

And whereas, for securing the payment of the said annuity of £                      , the said (*grantor*) has by his bond or obligation of even date with and executed immediately before the execution of these presents, become bound unto the said (*grantee*), his executors, administrators, and assigns, in the penal sum of £                      , subject to a condition for avoiding the said bond on payment by the said (*grantor*), his executors, administrators, or assigns, unto the said (*grantee*), his executors, administrators, and assigns, of the said annuity of £                      , with such proportional part as hereinafter mentioned, upon the days, at the place, and in manner hereinafter provided and appointed for payment of the same respectively.

FORM  
152.  
RECITAL  
OF BOND.

## 153.

*Recital of Agreement for further Securing Annuity  
—Repurchase and Payment of Costs.*

CHAP.  
X.  
FORM  
153.  
RECITAL OF  
AGREEMENT AS TO  
ANNUITY.

And whereas, on the treaty for the purchase of the said annuity, it was agreed that the same should be further secured by the provisions hereinafter contained, and also that the said annuity might be repurchased upon the terms hereinafter expressed, and that the costs and charges of preparing and perfecting the several securities for the said annuity, and of preparing and enrolling the memorial thereof, should be borne and paid by the said (*grantor*).

## 154.

*Recital of Warrant of Attorney for Securing Annuity.*

FORM  
154.  
RECITAL OF  
WARRANT  
OF AT-  
TORNEY.

And whereas, for securing the payment of the said annuity of £ , the said (*grantor*) has, by his warrant of attorney of even date with these presents, authorised , attorneys of Her Majesty's Court of , at Westminster, jointly and severally, or any other attorney of that court by confession or otherwise, to suffer judgment to be entered up against him in the said Court of , in an action of debt, at the suit of the said (*grantor*), his executors, or administrators, for the sum of £ for money lent and costs of suit, and judgment is to be forthwith entered up against the said (*grantor*), under the authority of the said warrant of attorney.





**PART II**  
**PRECEDENTS.**



## PART II.

### PRECEDENTS.

#### 1.

#### *Conditions of Sale of a large Freehold Estate (a).*

- |  |  |
|--|--|
| 1. THE estate will be offered in the several lots described in the following particulars of sale, or in such other lots as may be determined on by the vendor or his agent at the time of sale, and subject to the stipulations in the said particulars and in these conditions. The vendor reserves to himself the right of one bidding for each lot. | PRECE-<br>DENT 1.<br><br>CONDI-<br>TIONS<br>OF SALE—<br>FREEHOLD<br>ESTATE.<br>Estate to<br>be offered<br>in lots. |
| 2. The highest bidder shall be the purchaser, and if any dispute shall arise as to the last or highest bidder, such dispute shall either be decided by the auctioneer, or at his option the lot as to which there may be such dispute shall be put up again at a former bidding and resold.  | Bidding<br>reserved.<br><br>Highest<br>bidder to<br>be pur-<br>chaser.   |
| 3. No person shall at any bidding advance less than £           , unless the auctioneer shall declare otherwise, nor retract his bidding.  | Bidding<br>not to be<br>retracted.   |

(a) When any alterations are made in the particulars or conditions first issued, care should be taken to bring the amendments to the notice of the bidders. (Sweet's Supp. to Jarman's Conv. 329 n.)

	Alter- ations in particulars or con- ditions.
--	---

PRECE-  
DENT 1.

CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.

Payment  
of deposit  
and com-  
pletion of  
purchase.

4. Each purchaser shall immediately after the sale pay a deposit of £     per cent. on the amount and in part payment of his purchase-money into the hands of the auctioneer, if the same shall not exceed £     , and a deposit of £     per cent. if the same shall exceed that amount, and sign an agreement, in the form at the foot of these conditions, for payment of the remainder, on the     day of     next, at the offices of Messrs.     , solicitors for the vendor, at which time and place the several purchases shall be completed (a). All outgoings will be cleared by the vendor up to that time, and thenceforth the respective purchasers shall be entitled to the possession or receipt of the rents and profits of the respective lots. If from any cause whatever, the purchase of any lot shall not be completed on the said     day of     , the purchaser of each or any lot as to which there shall be such incompleteness, shall pay interest after the rate of £     per cent. per annum, on the balance of his respective purchase-money, and the amount of the valuation of the timber and fixtures from that day until the completion of the purchase; and this stipulation is without prejudice to the vendor's rights under the last of these conditions.

Where  
purchaser  
made to  
pay sum  
for con-  
tract.

(a) On sales in the country the purchaser is often made to pay for the contract. When this is so, after the words 'and sign an agreement to complete the purchase according to these conditions,' add, 'and he shall also, immediately after the sale, pay to the vendor's solicitor the sum of one guinea for the contract.' (1 Prid. Conv. 28 n.)

Signature  
of the  
agreement  
for sale.

One copy of the agreement or the conditions should be signed by the purchaser and the other by the auctioneer. Where the sale is made by private contract, say, 'so far as the same are applicable to a sale by private contract.'



5. Within                    days from the day of sale, the vendor shall deliver to each purchaser or his solicitor an abstract of his (the vendor's) title to the lot or lots purchased by him respectively, but no purchaser of more than one lot shall be entitled to more than one abstract, and each purchaser shall make his objections and requisitions (if any) in respect of the title or evidence of title, or in respect of the abstract, and send the same in writing to the said offices of the vendor's solicitors within                    days from the delivery of the abstract; and so far as any such objections or requisitions shall not be delivered within the time specified the title shall be deemed accepted, and in this respect time shall be considered of the essence of the contract. And if any objections or requisitions shall be made within the time specified, which the vendor cannot or shall not choose to remove or comply with, he may at any time afterwards (unless such objections or requisitions be withdrawn) rescind the contract, by giving notice in writing to that effect, under his hand or under the hands of his solicitors, to the purchaser or his solicitor; in which case the deposit shall be returned, but without interest, costs, or other compensation, and this condition shall subsist notwithstanding any discussion or negotiation respecting such objections or requisitions, or any attempt to remove, obviate, or answer the same, and shall be without prejudice to the right of the vendor to enforce the contract (a).

PRECE-  
DENT 1.

CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.

Delivery of  
abstracts  
and re-  
quisitions.

(a) Where a vendor once expressed a willingness to answer objections to the title, it was held that he could not afterwards avail himself of a condition providing that he should be at liberty to rescind the contract in case objections should be taken, which he might be unable or unwilling to remove. (Tanner v. Smith, 10 Sim. 410.)

Condition  
as to re-  
moving  
objections.

PRECEDENT 1.

CONDITIONS OF SALE—FREEHOLD ESTATE.

Commencement of title.

Reservation of mines.

Burdens of a local nature.

Evidence of identity of parcels.

6. The abstracts of title shall commence with the will of \_\_\_\_\_, a former owner of the property, dated \_\_\_\_\_. But the respective purchasers shall not require any evidence of the seisin of the said \_\_\_\_\_, nor require, object to, or go into the title anterior to the said will, with which the abstracts are to begin, notwithstanding earlier deeds, wills, or documents may therein be recited or referred to, or there may be any covenant for the production thereof on any other ground whatever.

7. The estate is sold subject to the reservation of all mines, minerals, and quarries whatsoever, with the usual powers of searching for and working the same, and subject to all rights of road or way or other easements over or affecting the estate, or any part thereof; and to such crown, chief, quit or fee farm rents, land-tax, tithes, or tithe commutation rent-charge in lieu of tithes, or other charges, impositions, payments, or liabilities whatsoever of a local nature (if any), and to all such tenancies and tenants' rights as affect the same or any part thereof. No purchaser shall require or be entitled to receive any compensation whatever for or on account of any of the matters aforesaid.

8. The respective purchasers shall be satisfied with such evidence of the identity of the abstracted parcels with the properties described in the particulars as the abstracted documents themselves furnish, and no further proof or evidence in respect thereof shall be required, and no purchaser shall make any requisition or objection on account of any variation in such parcels either as to quantity or rental, or by reason that the maps or plans of the estate may not be in all respects perfectly accurate.

9. The statement in the particulars of the quantities of the land shall be taken to be correct, and shall be binding on the vendor and respective purchasers ; and if any error or misstatement in any other respect shall be discovered in the particulars, such error or misstatement (if capable of compensation) shall not annul the sale, but a compensation or equivalent shall be allowed or given by the vendor or respective purchasers as the case may require, such compensation (in case of dispute) to be settled by two referees or their umpire in manner following (that is to say): each party shall, within fourteen days after notice of the error or misstatement, shall have been given, appoint one referee by writing, and the referees so appointed shall, before they commence their duty, appoint an umpire by writing, and the decision of such referees if they agree, or such umpire if they disagree, shall be final. In case either party shall neglect or refuse to appoint a referee within the time specified, the referee appointed by the other party shall make a final decision alone.

PRECE-  
DENT 1..

CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.

Reference  
to arbitra-  
tion.

10. Each purchaser shall consider all recitals or statements in any deeds or documents twenty years old or upwards as conclusively proved thereby, and shall not require any evidence or explanation of, concerning, or in support of the same ; and the vendor shall not be required to produce or abstract in chief such deeds, wills, or other documents whatsoever, as are not in his possession, or enter into or procure any covenant for the production thereof respectively.

Recitals to  
be evi-  
dence.

11. The expense of getting in, conveying, assign- ing, or deducing the title to any outstanding legal estate or term of years (if any), and the expense of the production and inspection of all deeds, evidences,

Expenses  
to be borne  
by pur-  
chaser.

**PRECE-  
DENT 1.**  
**CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.**

and muniments of title not in the possession of the vendor, and the expense of all journeys, and all other expenses incidental to such production or inspection, and the expense of searching for, procuring, and making of all certificates, attested, certified, stamped, office, or other copies or extracts of or from any registers, acts of parliament, deeds, wills, awards, grants, or other documents, and of all declarations or other evidences, whether for the verification of the abstract or for any other purpose, and which, consistently with these conditions, can be required, and also the expense of the production and inspection of any deeds or documents, referred to in the abstracts for the purpose of ascertaining that the same do not affect the estate sold, shall be paid and borne by the respective purchasers ; but the completion of the respective purchases shall not be delayed through the respective purchasers not having obtained any such evidence by the day fixed for that purpose.

Timber to  
be taken  
at valua-  
tion.

12. The timber, timber-like trees, pollards, tellers, saplings, and other trees, plantations, coppice, and underwood, and all fixtures and fittings (if any) in or about any house or building on each lot, shall be taken and paid for by the purchaser thereof at the time of completion of his purchase, in addition to his purchase-money, at a fair valuation. In case of dispute, such valuation to be settled in like manner as provided by the 9th condition.

Execution  
of the con-  
veyances.

13. Upon payment of the remainder of the purchase-money, and of the valuation of the timber and fixtures, as mentioned in the 12th condition, at the time and place above-mentioned, the vendor shall execute proper conveyances to the respective purchasers of the lots purchased by them respectively;

but such conveyances are to be prepared by and at the expense of the respective purchasers, and are to be tendered or left by them respectively at the offices of the vendor's solicitors seven days before the time fixed for the completion of the purchases, for examination on behalf of and execution by the vendor.

PRECE-  
DENT 1.  
  
CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.

14. Such of the deeds and documents as shall relate exclusively to any lot or lots sold shall be delivered to the purchaser thereof, or, in case of two or more purchasers, to the purchaser of the largest value, on his entering into a covenant for production thereof in the usual form with any purchaser requiring the same ; but such of the deeds and documents as shall not relate exclusively to any lot or lots, shall be retained by the vendor, and the respective purchasers shall accept the covenant of the vendor in the usual form for production of the same. All such covenants as aforesaid shall be prepared by and at the expense of the person or persons requiring the same, and each covenant to be so entered into shall be made determinable on the last-mentioned deeds and documents being handed over to any other person or persons, and on such person or persons entering into a similar covenant for production of the same, to be prepared and executed at the like expense as aforesaid.

Custody of  
the deeds.

*Lastly.* If any purchaser shall neglect or fail to comply with the above conditions, his deposit-money shall be paid to and retained by the vendor as liquidated damages, and he shall be at full liberty to resell the lot or lots purchased by such person, either by public auction or private contract, at such time and place, subject to such conditions, and in such manner as he shall think fit, and the deficiency in price (if

Purchasers  
making  
default.

PRECE-  
DENT 1.  
  
CONDI-  
TIONS  
OF SALE—  
FREEHOLD  
ESTATE.

any) which shall happen on such second sale, and all expenses attending the same, shall immediately after such second sale be made good and paid to the vendor by the defaulter at this present sale; and in case of non-payment thereof, the whole, or such part thereof as shall not be paid, shall be recoverable by the vendor as and for liquidated damages, and it shall not be necessary for the vendor previously to tender a conveyance to the purchaser so making default.

## 2.

*Conditions of Sale of Freehold Properties.*

PRECE-  
DENT 2.  
  
CONDI-  
TIONS OF  
SALE—  
FREEHOLD  
PROPER-  
TIES.

Highest  
bidder to  
be pur-  
chaser.

Reserva-  
tion of  
bidding.

Bidding  
not to be  
retracted.

Payment  
of pur-  
chase-  
money and  
completion  
of pur-  
chase.

1. The highest bidder shall be the purchaser, and if any dispute shall arise as to the last or highest bidder, the lot in dispute shall be put up again at a former bidding. The vendor reserves to himself the right of one bidding for each lot.

2. No person shall at any bidding advance less than £        for each lot, nor retract his bidding.

3. Each purchaser shall immediately after the sale pay a deposit in the proportion of £        for every £100 of his purchase-money into the hands of the auctioneer, and sign an agreement for payment of the remainder on the        day of        next, at the offices of Messrs.        (the vendor's solicitors), at which time and place the several purchases shall be completed. All outgoing will be cleared by the vendor up to that time, and thenceforth the respective purchasers shall be entitled to the rents and profits of their respective lots. If from any cause whatever the purchase of any lot shall not be completed on the said        day of        the purchaser, or respective purchasers, of the lot or lots,

the purchase or respective purchases whereof shall not be completed, shall pay interest after the rate of £5 per cent. per annum on the balance of his or their purchase-money or respective purchase-moneys, from that day until the completion of his or their purchase or respective purchases, but this stipulation is without prejudice to the vendor's rights under the last of these conditions.

PRECE-  
DENT 2.

CONDI-  
TIONS OF  
SALE -  
FREEHOLD  
PROPER-  
TIES.

4. Within            days from the day of sale the vendor shall, at his own expense, deliver to each purchaser, or his solicitor, an abstract of his (the vendor's) title to the lot or lots purchased by him respectively, and each purchaser shall make his objections and requisitions (if any) in respect of the title, or evidence of title, or in respect of the abstract, and send the same in writing to the said offices of the vendor's solicitors within            days from the delivery of the abstract, and all objections and requisitions not made within the time specified shall be taken to be waived, and in this respect time shall be deemed of the essence of the contract. And if any objections or requisitions shall be made within the time specified, which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty at any time afterwards (unless such objections or requisitions be withdrawn) to rescind the contract by giving notice in writing to that effect, under his hand or the hands of his solicitors, to the purchaser or his solicitor, in which case the deposit shall be returned, but without interest, costs, or other compensation, and this condition shall subsist, notwithstanding any discussion respecting such objections or requisitions, or any attempt to remove, obviate, or answer the same, and

Delivery of  
abstract  
and send-  
ing in re-  
quisitions.

PRECE-  
DENT 2.CONDI-  
TIONS OF  
SALE—  
FREEHOLD  
PROPER-  
TIES.Com-  
mencement  
of ab-  
stracts.

shall be without prejudice to the right of the vendor to enforce the contract.

5. The abstracts of title to the several lots shall begin as follows (that is to say): as to about , part of lot 1, with a conveyance to a purchaser dated the day of . The covenant against incumbrances in this conveyance extends to claims and demands of a lady as the widow or under the will of her husband then deceased, respecting which claims and demands the vendor can give no information. As to the remainder of lot 1, formerly copyhold of the manor of , but enfranchised in the year , the abstract of the copyhold title shall begin with a surrender and admittance dated the day of , and the abstract of the freehold title with the deed of enfranchisement, dated the day of . About two poles of this part of lot 1 were enclosed from the lord's waste, and previously to the aforesaid surrender and admittance, but at the same court was granted with the consent of the Homage, to hold by copy of court-roll ; no objection shall be raised on this ground, nor shall the vendor be required to show a special custom to make such a grant. And as to lot 2, formerly common or waste ground, and sold in by the Commissioners of the Inclosure Act, the abstract shall begin with the Commissioners' acknowledgment of the receipt of the purchase-money, dated the day of , which shall be accepted as sufficient evidence of the directions of the Inclosure Act having been complied with, and of the fee simple having passed to the purchaser discharged from all other common and other rights.



As to lot 3, the purchaser shall require no further evidence of title thereto than a statutory declaration, by some person deposing to knowledge on that head, that the same has been in the enjoyment or possession of the owner or owners of the remainder of the property now offered for sale for        years last past. And as regards all the lots, the respective purchasers shall not be entitled to require or object to the title anterior to the several documents with which the abstracts are to begin as aforesaid, notwithstanding such anterior title may in any case be recited or referred to in any of the abstracted documents, or to prove that at the dates of such documents respectively the property to which they respectively relate was not subject to a title to dower ; and as to lot 1, the purchaser shall not require the part held under each title to be distinguished.

6. The tithes of lot 1 were commuted for corn-rents under the        Inclosure Act, and lot 2 was discharged from tithes by virtue of the same Act. As these facts are well known in the neighbourhood of the property, and can be ascertained by reference to the inclosure award, the vendor shall not be required to establish them by evidence. And as regards the land-tax, certificates of redemption will be produced which, with a declaration by the vendor that no land-tax has been paid by or claimed from him, shall be accepted as sufficient proof of the discharge of the land-tax, without evidence to identify or connect the land described in the certificates with the property in the particulars of sale ; and as to the

a.        r.        p. (part of lot 1), the redemption having been effected anterior to the conveyance with

PURCHASER'S  
DECLARATION 2.

CONDI-  
TIONS OF  
SALE—  
FREEHOLD  
PROPER-  
TIES.

Special  
facts re-  
lating to  
title.

PRECE-  
DENT 2.

CONDI-  
TIONS OF  
SALE—  
FREEHOLD  
PROPER-  
TIES.

Expenses  
to be borne  
by pur-  
chaser.

which the abstract is to begin, by the grantor in that conveyance, his title to the land at the date of the certificate shall not be questioned (a).

7. The expense of the production and inspection of all deeds, court-rolls, evidences and muniments of title not in the possession of the vendor, and the expense of all journeys and all other expenses incidental to such production or inspection, and the expense of searching for, procuring, and making of all certificates, attested, certified, stamped, office, or other copies or extracts of or from any registers, court-rolls, deeds, wills, awards, grants, or other documents, and of all declarations or other evidences, whether required for the verification of the abstract, or for any other purpose, shall be paid by the respective purchasers requiring the same, by whom also shall be borne the expense of registering in Middlesex (if required) all deeds or other documents not appearing to be already registered there.

As to deeds  
and facts  
20 years  
old.

8. Every certificate, evidence, deed, or document, which is in the vendor's custody shall be produced; but to prevent delay and expense every evidence or verification that a purchaser may require for any purpose whatever, of or as to any deed, document, fact, or circumstance, which, or the evidence as to which, may not be in the vendor's custody, that may have been executed, or have happened or taken place 20 years since, or which may be recited, or mentioned, or may be inferred to have happened or taken place for that period, shall be procured or obtained by the purchaser

(a) These special conditions are given in order to show the mode in which facts and circumstances connected with the title of a similar kind should be stated, though, of course, all or many of them are not likely to occur together in any particular case.

at his own expense, but he shall not delay completion of the contract on account thereof.

PRECEDENT 2.

9. The rent has been apportioned as stated in the particulars without the concurrence of the tenants, but shall be binding on the vendor and respective purchasers. The agreement for lease under which the tenant holds and which, or a counterpart, or copy whereof, will be produced at the sale, shall not be objected to on any ground.

CONDITIONS OF SALE—FREEHOLD PROPERTIES.  
Apportionment of rent.

10. Upon payment of the remainder of the purchase-money at the time and place above mentioned, the vendor shall execute proper conveyances to the respective purchasers of the several lots purchased by them respectively; but such conveyances are to be prepared by and at the expense of the respective purchasers, and are to be tendered or left by them respectively at the office of the vendor's solicitors seven days before the time fixed for the completion of the purchase, for examination on behalf of and execution by the vendor.

Execution of the conveyances.

11. The statement in the particulars of the quantities of the land shall be taken to be correct, and shall be binding on the vendor and respective purchasers, and if any error or misstatement in any other respect shall be discovered in the particulars, such error or misstatement (if capable of compensation) shall not annul the sale, but a compensation or equivalent shall be allowed or given by the vendor or respective purchasers, as the case may require, such compensation to be settled (in case of dispute) by two referees or their umpire in manner following (that is to say): Each party shall, within fourteen days after notice of the error or misstatement shall have been given, appoint one referee by writing, and the referees

Reference to arbitration.

PRECE-  
DENT 2.  
CONDI-  
TIONS OF  
SALE—  
FREEHOLD  
PROPER-  
TIES.

so appointed shall, before they commence their duty, appoint an umpire by writing, and the decision of such referees if they agree, or such umpire if they disagree, shall be final. In case either party shall neglect or refuse to appoint a referee within the time specified, the referee appointed by the other party shall make a final decision alone.

Purchasers  
making  
default.

*Lastly.* If any purchaser shall neglect or fail to comply with the above conditions, his deposit-money shall be paid to and retained by the vendor as liquidated damages, and he shall be at full liberty to re-sell the lot or lots purchased by such person either by public auction or private contract, at such time and place, subject to such conditions, and in such manner, as he shall think fit, and the deficiency in price (if any) which shall happen on such second sale, and all expenses attending the same, shall immediately after such second sale be made good and paid to the vendor by the defaulter at this present sale; and in case of non-payment thereof, the whole, or such part thereof as shall not be paid, shall be recoverable by the vendor as and for liquidated damages, and it shall not be necessary for the vendor previously to tender a conveyance to the purchaser or purchasers respectively making default.

### 3.

#### *Conditions of Sale of Leasehold Houses.*

PRECE-  
DENT 3.  
CONDI-  
TIONS OF  
SALE—  
LEASE-  
HOLD  
HOUSES.  
Highest  
bidder to  
be pur-  
chaser.

1. The highest bidder for each lot shall be the purchaser, and if any dispute shall arise between two or more bidders the lot shall be put up again. No person shall advance less than £5 at a bidding, and no bidding shall be retracted. The vendor

reserves to himself the right of one bidding for each lot.

2. Each purchaser shall immediately after the sale pay a deposit of £ per cent. in part of his purchase-money into the hands of the auctioneers, and sign an agreement for payment of the remainder on the day of , at the office of the vendor's solicitor, Mr. , London, at which time and place the purchase is to be completed. The rent or possession will be received or retained and the outgoings discharged by the vendor up to the said day of , and as from that day the outgoings shall be discharged and the rents or possession taken by the respective purchasers; and if from any cause whatever the purchase shall not be completed on that day, the respective purchasers shall pay to the vendor interest at the rate of £5 per cent. per annum on the remainder of the purchase-money until payment thereof.

3. The vendor shall, within days from the day of sale, deliver to each purchaser or his solicitor an abstract of title, to commence with the indenture of lease, dated , but the purchasers shall not require the lessor's title (a), and the production of the last receipt for payment of ground-rent shall be

PRECEDENT 3.

CONDITIONS OF SALE—LEASEHOLD HOUSES.  
No bidding to be retracted.  
Payment of purchase-money and completion of purchase.

Delivery of abstract.

(a) It appears to be settled that a purchaser has a right to the production of the title of the lessor unless waived by express contract. (*Ogilvie v. Foljambe*, 3 Mer. 53.) In the case of a bishop's lease, however, the lessor's title cannot be required; for leases of bishops are distinguishable from those granted by private persons. The right of a bishop to grant a lease depends not on title-deeds, but on the statute law of the land, namely, the restraining Act of Elizabeth. (*Fane v. Spencer*, 2 Mad. 438.) A practice, however, has very properly sprung up among auctioneers, in selling leaseholds, to insert a clause in the conditions that the vendor shall not be called upon to show the title of the lessor. Indeed, an

Practice of precluding production of lessor's title.

PRACTICE  
RENT 3.CONDI-  
TIONS OF  
SALE—  
LEASE-  
HOLD  
HOUSES.How pur-  
chase to be  
completed.

conclusive evidence of the due performance of the covenants contained in the lease up to the time of completion.

4. The ground-rent of £ per annum shall be apportioned equally between the two lots, as mentioned in the particulars, and in the event of only one lot being sold, the vendor will execute to the purchaser of such lot an underlease for the whole term, less three days, at such apportioned rent; but in the event of both lots being sold to different purchasers, the purchaser of lot 1 shall take an assignment of the premises comprised in both lots, and grant an underlease to the purchaser of lot 2 for the whole of the term, less three days, at such apportioned rent; such underlease to be in accordance with a form which will be produced at the time of sale. The underlessee shall execute a counterpart of his underlease, and such underlease and counterpart shall be prepared by the vendor's solicitor at the expense of the purchaser.

Expenses  
to be borne  
by pur-  
chaser.

5. All official, attested, or other copies or extracts

auctioneer is bound to take notice of this practice, and if he omit to do so, he will be guilty of negligence, and cannot recover any commission for his services. (*Denew v. Daverell*, 3 Camp. 451.)

Title under  
original  
lease only  
precluded  
in the case  
stated.

In one case (*Seaton v. Mapp*, 2 Coll. 556), there was this stipulation:—'and the purchaser shall not be entitled to the production of, or to enquire into, or to take any objection to, the title to the premises *prior to the lease by which the premises are held*, nor shall the purchaser be entitled to object to the title by reason of the premises being held by an underlease, or to require any indemnity against the rent and covenants in any superior lease or leases relative to the property.' It was held that this clause meant to preclude investigation as to the original lease only, and not as to the underlease, under which the vendor immediately claimed. A few words, therefore, should be added to the condition where necessary, in order to meet the case of an underlease.

of or from any documents not in the vendor's possession, and all statutory declarations required by the purchaser, shall be obtained and made at his expense. No objection or requisition shall be made in consequence of any document (if any) being unstamped or insufficiently stamped.

PRECE-  
DENT 3.  
CONDI-  
TIONS OF  
SALE—  
LEASE-  
HOLD  
HOUSES.

6. The purchasers respectively shall make their objections and requisitions (if any) on the title, and send the same to the vendor's solicitor within days from the delivery of the abstract ; and all objections and requisitions not so made shall be considered waived, and in this respect time shall be of the essence of the contract ; and in case the purchasers shall, within the time aforesaid, make any objections to or requisitions on the title, which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty, by notice in writing to be given to the purchaser or his solicitor at any time, notwithstanding any negotiation respecting such objections or requisitions, to annul the sale, and shall thereupon return to such purchaser his deposit-money, but without interest, costs, or other compensation.

Pur-  
chasers'  
objections  
and re-  
quisitions.

7. The title-deeds will be delivered to the purchaser of lot 1, if both lots are sold, who will enter into the usual covenant for production, and giving attested copies thereof to the purchaser of the other lot ; but the said documents will be retained by the vendor until both lots are sold, and the purchaser of the lot sold shall in the meantime be entitled at his own expense to the production of such documents or copies of them, but not to a covenant for that purpose ; and every covenant under this condition shall be prepared by and at the expense of the purchaser requiring the same.

Custody of  
the title-  
deeds.

PRECE-  
DENT 3.

CONDI-  
TIONS OF  
SALE—  
LEASE-  
HOLD  
HOUSES.  
Identity of  
property.  
Default-  
ing pur-  
chasers.

8. The property is believed and shall be taken to be correctly described, and no evidence shall be required of the identity of the premises now offered for sale other than is afforded by the deeds thereof.

*Lastly.* If the purchasers respectively shall fail to comply with the above conditions, their deposits shall be thereupon forfeited to the vendor, who shall be at liberty to re-sell the property either by public auction or private contract, at such time and in such manner, and subject to such conditions, as he shall think fit, and the deficiency in price (if any) which may happen on such second sale, and all expenses attending the same, shall immediately after be paid by the defaulter to the vendor, and, in case of non-payment, shall be recoverable by the vendor as liquidated damages.

PRECE-  
DENT 4.

CONVEY-  
ANCE OF  
FREE-  
HOLDS.  
Parties.  
Recitals—  
of convey-  
ance to  
vendor.  
Of con-  
tract.

## 4.

*Conveyance of Freehold Property on Sale.*

This indenture, made, &c., between (vendor), of, &c., of the one part, and (purchaser), of, &c., of the other part. (*Recite conveyance to vendor.*) And whereas the said (vendor) has contracted (a) with the said (purchaser)

Sale by  
auction  
should be  
treated as  
if made by  
private  
contract.

(a) Where the sale takes place by auction, it was formerly the practice to recite the mode, time, and place of sale, but this plan has now been discontinued. It is usual to treat the sale as if made by private contract. This course prevents the necessity of the production of the particulars and conditions of sale, which might otherwise be called for. Such a requisition is always inconvenient, and moreover dangerous in those cases where the particulars or conditions disclose circumstances in the title desirable to be kept out of view. It may be observed that the expression 'contracted' will be correct, although the estate be sold by auction, as the written agreement is the obligatory part of the transaction. In those rare



for the absolute sale to him of the . and here-  
 ditaments hereinafter described, for the price of  
 £ . Now this Indenture witnesseth that, in  
 pursuance of the said contract, and in consideration  
 of the sum of £ to the said (vendor), now  
 paid by the said (purchaser), (the receipt  
 whereof is hereby acknowledged), He, the said  
 (vendor), doth by these presents, grant and convey  
 unto the said (purchaser), All (*parcels, general  
 words for farms, estate clause.*) To have and To  
 hold the said and premises hereby assured or  
 intended so to be, unto and to the use of the said  
 (purchaser), his heirs and assigns, for ever.  
 And He, the said (purchaser), doth hereby  
 declare that no widow whom he may leave shall be  
 entitled to dower out of the said premises, or any  
 part thereof. (*Covenants for title.*) In witness, &c.

PRECE-  
 DENT 4.  
 CONVEY-  
 ANCE OF  
 FREE-  
 HOLDS.  
 Testatum.

Haben-  
 dum.

Declara-  
 tion  
 against  
 dower.

## 5.

*Conveyance of Freehold and Copyhold Properties.*

This indenture, made, &c., between (vendor),  
 of, &c., of the one part, and (purchaser), of, &c.,  
 of the other part. (*Recitals as to title.*) And whereas  
 the said (vendor) has contracted with the said  
 (purchaser) for the absolute sale to him of the said

PRECE-  
 DENT 5.  
 CONVEY-  
 ANCE—  
 FREE-  
 HOLDS AND  
 COPY-  
 HOLDS.  
 Parties.  
 Recitals—  
 of title.  
 Of con-  
 tract.

cases, however, where the sale is required to be made by auction,  
 the fact that it was so made should appear on the face of the con-  
 veyance. (Hayes' Conc. Conv. 208 n.) As a general rule it is of  
 no consequence whether the contract is recited as for a sale or a  
 purchase, but where the sale is by trustees, or the donees of a power  
 of sale, it is more correct to recite the contract as a contract for  
 sale, while, if the purchasers are trustees, it is better to recite the  
 contract as a contract for purchase. (Davidson's Com. F. 19 n.)

PRECE-  
DENT 6.  
  
CONVEY-  
ANCE—  
FREE-  
HOLDS AND  
COPY-  
HOLDS.  
Of appor-  
tionment  
of pur-  
chase-  
money.  
Recital of  
surrender.

freehold and copyhold , for the price of £ .  
And whereas it has been agreed that the sum of  
£ , part of the said purchase-money, shall be  
deemed the apportioned price for the said freehold  
hereditaments (a), and that the sum of £ , the  
residue of the said purchase-money, shall be deemed  
the apportioned price for the said copyhold heredita-  
ments. And whereas, in pursuance and part per-  
formance of the said contract, so far as relates to the  
said copyhold hereditaments, and in consideration of  
the sum of £ , the said apportioned price for the  
same to the said (v<sup>endor</sup>), paid by the said

(p<sup>urchaser</sup>), the said (v<sup>endor</sup>) did,  
on the day of , out of Court surrender all  
and singular the said copyhold to the use of  
the said (p<sup>urchaser</sup>), his heirs and assigns, at  
the will of the lord, according to the custom of the  
said manor, and by and under the rents, suits, and  
services therefore due and of right accustomed. Now

Testatum. this Indenture witnesseth that, in pursuance and  
further performance of the said recited contract, and  
in consideration of the sum of £ sterling, the  
apportioned price for the said freehold hereditaments,  
to the said (v<sup>endor</sup>), now paid by the said  
(p<sup>urchaser</sup>), the receipt of which said sum of  
£ he, the said (v<sup>endor</sup>), doth hereby ac-  
knowledge, and therefrom for ever release the said  
(p<sup>urchaser</sup>), his heirs, executors, administra-  
tors, and assigns ; He, the said (v<sup>endor</sup>), doth  
by these presents grant and convey unto the said  
(p<sup>urchaser</sup>), his heirs and assigns, All (p<sup>arcel</sup>s,

Haben-  
dum.

Apportion- (a) The apportionment may be made as the parties think fit,  
ment of without regard to the relative values of the different properties.  
price of (1 Dav. Conv. 174 n.)  
copyholds.

*general words for farms, estate clause.*) To have and To hold the said freehold hereby assured or intended so to be unto and to the use of the said (*purchaser*), his heirs and assigns for ever. (*Declaration against dower, covenants for title.*) In witness, &c.

PRECE-  
DENT 5.  
CONVEY-  
ANCE—  
FREE-  
HOLDS AND  
COPY-  
HOLDS.

## 6.

*Deed of Covenant for the Production of Deeds (a).*

This indenture, made, &c., between (*covenantor*), of, &c., of the one part, and (*covenantee*), of, &c., of the other part. Whereas, by indenture bearing even date with and executed immediately before the execution of these presents, and made between the said (*covenantor*) of the one part, and the said (*covenantee*) of the other part, all, &c. (*parcels*), have been conveyed unto and to the use of the said (*covenantee*), his heirs, and assigns. And whereas, inasmuch as the deeds,

PRECE-  
DENT 6.  
PRODUC-  
TION OF  
DEEDS.  
Parties.  
Recital of  
conveyance  
of even  
date.

(a) The purchaser is entitled to a covenant for the production of every document, which the vendor is obliged to state in his abstract, and which is not delivered up to him, except documents on record copies of court-rolls, wills proved in the Ecclesiastical Courts or Court of Probate, and also documents preserved in some general or quasi public repository, from whence copies may be obtained that will be admissible as primary evidence. (*Cooper v. Emery*, 10 Sim. 609, 9 Byth. & Jarm. 69, note by Sweet.) And where the vendor has himself a covenant for production of deeds which he does not hand over, then the purchaser may require a covenant from the vendor for the production of those title-deeds to such an extent as the covenant with the vendor entitles him to the production thereof. (*Fearne Post. Works*, 113.) Where the covenant extends to deeds not recited or noticed in the conveyance, it is better to have a separate deed. (1 Dart, 508.) After the lapse of years, it is frequently very difficult to obtain deeds covenanted to be produced, and therefore it is wiser not to disclose them in the conveyance. (2 Dav. Conv. 540 n.) Besides, as covenants for the production of

Covenant  
to pro-  
duce  
deeds.

Where  
vendor has  
himself a  
covenant  
for pro-  
duction.

Advan-  
tages of a  
separate  
deed.

**PRECE-  
DENT 6.****PRODUC-  
TION OF  
DEEDS.**

That deeds  
are to re-  
main in  
possession  
of coven-  
antor.

**Testatum.**

evidences, and writings specified in the schedule to these presents, relate not only to the title of the said messuages, &c., but also to other property of greater value, belonging to the said (*covenantor*), it has been agreed that the same deeds, evidences, and writings shall remain in the custody of the said (*covenantor*), but that the said (*covenantor*) shall enter into the covenant hereinafter contained, for the production and for furnishing copies, extracts, and abstracts of and from the same deeds, evidences, and writings. Now this Indenture witnesseth, that in pursuance and performance of the said recited agreement in such

**By trustees  
or mort-  
gagees.****By the  
largest  
purchaser.****Attested  
copies.**

title-deeds are constructive notice of incumbrances, and after a long interval lead to an enquiry for deeds which have been converted into dust and ashes, the safer practice is to take the covenant in a separate instrument (3 Byth. & Jarm. 650 n.), though to save expense it is often included in the deed of conveyance. Where trustees or mortgagees covenant to produce deeds, the form often is for them to covenant to produce the deeds so long as they remain in their custody or power; but the better plan, we think, is to make the covenant absolute in the first instance with a proviso of qualification, but in such case it should be stipulated that the costs of the new covenant should be borne by the purchaser, his heirs or assigns. A vendor, however, who has a beneficial estate in the land, cannot insist on a proviso for determination of the covenant being inserted unless it is previously stipulated for. (1 Prid. Conv. 376 n.) Where there is a covenant to produce deeds by the largest purchaser in value on a sale by auction, in pursuance of a condition for such purpose, the schedule should contain all the documents of title delivered to the covenantor. A memorandum of the covenant for production should be indorsed on one or more of the principal scheduled deeds. (2 Hayes' Conv. 112 n.) In a case before Lord Rosalyn (referred to in *Dare v. Tucker*, 6 Ves. 460), the vendor entered into a covenant that he would produce the original title-deeds simply, and his lordship construed it not only that he engaged to produce the title-deeds, but also, as a negative stipulation that he should not give attested copies. This decision gave rise to the additional clause as to furnishing attested copies. (1 Barton's Pr., 197 n.)

behalf (a), He the said (*covenantor*) doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said (*covenantee*), his heirs and assigns, that he the said (*covenantor*), his heirs or assigns, unless hindered or prevented by fire or some other inevitable accident, shall or will at any time or times, and from time to time hereafter, on every reasonable request in writing, and at the costs and charges in all things of the said (*covenantee*), his heirs or assigns, produce and show forth, or procure to be produced and shown forth, in England or Wales, but not elsewhere, unto the said (*covenantee*), his heirs or assigns, or his or their attorney, solicitor, agent, or counsel, or to any other person or persons whom the said (*covenantee*), his heirs or assigns, shall direct or appoint, or to or before any court or courts of law or equity, or at or before any trial or

PRECE-  
DENT 6.

PRODUC-  
TION OF  
DEEDS.

Covenant  
to produce  
deeds.

(a) Where the deeds are in the hands of several persons who covenant to produce them, proceed as follows:—‘He the said doth for himself, his heirs, executors, administrators, and assigns, and as to and concerning only his or their respective acts, deeds, and defaults, and only as regards the deeds, evidences, and writings specified or mentioned in the said first schedule to these presents, and the copies, extracts, or abstracts of and from the same respectively; And the said and do for themselves, their heirs, executors, administrators, and assigns, jointly, and each of them doth for himself, his heirs, executors, administrators, and assigns, severally, and as to and concerning only the acts, deeds, and defaults of themselves or himself respectively, and their or his respective heirs, executors, administrators, and assigns, and only as regards the deeds, evidences, and writings specified or mentioned in the said second schedule to these presents, and the copies, extracts, or abstracts of and from the same respectively; hereby covenant with the said , his heirs, and assigns, that they the said covenanting parties respectively, or their respective heirs, executors, administrators, and assigns, some or one of them, unless hindered,’ &c.

Where  
deeds in  
hands of  
several  
persons.

PRECE-  
DENT 6.

PRODUC-  
TION OF  
DEEDS.

Not to de-  
face same,

and give  
attested  
copies.

Proviso to  
determine  
covenant  
to produce.

trials, hearing or hearings, commission or commis-  
sions, for the examination of witnesses or otherwise,  
as occasion shall be or require, every or any of the  
deeds, evidences, and writings specified or mentioned  
in the said schedule to these presents, for the proof,  
manifestation, support, or defence of the title of the  
said (*covenantee*), his heirs or assigns, of, in, or to the  
said messuages, &c.: And that the said (*covenantor*),  
his heirs or assigns, shall not nor will at any time or  
times hereafter wilfully deface, cancel, or obliterate  
any or either of the same deeds, evidences, and  
writings: And also that the said (*covenantor*), his  
heirs or assigns, shall and will, from time to time  
when thereunto required, unless hindered or pre-  
vented as aforesaid, and at the costs and charges of  
the said (*covenantee*), his heirs or assigns, give or  
deliver, or cause or procure to be given or delivered  
to the said (*covenantee*), his heirs or assigns, a fair,  
true, neat, and attested copy, extract, or abstract of  
each, any, or either of the same deeds, evidences, and  
writings respectively, and suffer such copies, extracts,  
or abstracts respectively, to be examined and compared  
with the originals, either by the said (*covenantee*), his  
heirs or assigns, or any person or persons, whom he  
or they shall appoint. (a) In witness, &c.

(a) Where the deed of covenant is made determinable on the  
deeds being handed over to any other person, there should be added  
the following proviso:—' Provided always that if the said  
(*covenantor*), his heirs, executors, administrators, or assigns, at any  
time or times hereafter, shall deliver the said several deeds, evi-  
dences, and writings to any future purchaser or purchasers of or  
person or persons interested in the hereditaments to which the same  
relate, and shall also, but free from all costs and charges to the said  
(*covenantee*), his heirs or assigns, deliver unto or procure  
for him or them, from the person or persons having the custody of the

THE SCHEDULE ABOVE REFERRED TO.

PRECEDENT 6.

Indentures of lease and release, latter indenture between John Jones, first part, William Smith, second part, Henry Robinson, third part.

PRODUCTION OF DEEDS. Schedule of deeds.

1st & 2nd Nov. 1833. Indenture between Edgar Atheling, one part, James Tomkins, other part.

3rd August, 1863.

(And so on with any other deeds or documents.)

7.

*Conveyance by Trustees of Freehold Lands and Hereditaments under Decree in Administration Suit.*

This indenture, made, &c., between A. B. of, &c., and C. D. of, &c. (*trustees*), of the one part, and E. F. of, &c. (*purchaser*), of the other part. (*Recite will of the testator, death and probate.*) And whereas, on the      day of      , an order was made by the Court of Chancery, on summons, for the administration of the real and personal estate of the said testator. And whereas, on the      day of      , an order was made by the said Court, for sale of the real

PRECEDENT 7. CONVEYANCE UNDER DECREE. Parties. Recitals—of title. Order on summons.

said deeds, evidences, or writings, a covenant for production of and furnishing copies, extracts, and abstracts of and from the same, similar to the covenant hereinbefore contained, or as near thereto as circumstances will admit; then and in such case the covenant hereinbefore contained, on the part of the said      (*covenantor*), shall, subject and without prejudice to any action or suit, or cause of action or suit which shall have accrued or been commenced, be considered as virtually released and discharged to all intents and purposes whatsoever.'

PART-  
MENT 7.

CONVEY-  
ANCE  
UNDER  
DECREE.  
Order for  
sale.

That pur-  
chaser  
should pay  
deposit  
and resi-  
due into  
Bank.

That E. F.  
became  
purchaser.

That result  
of sale has  
been cer-  
tified.

Of order  
for pay-  
ment of  
purchase-  
money  
into Court,

estate of the said testator by public auction, with the approbation of the judge to whose court the said cause was attached. And whereas, by the conditions on such sale by auction, it was stipulated that the purchaser should pay his deposit to G. H., the person appointed to receive the same, and, under an order to be obtained by him for that purpose, pay the residue of the amount of his purchase-money, after deducting the said deposit, into the Bank of England, with the privity of the Accountant-General of the said Court, to the credit of the said cause, on or before the day of            next. And whereas, at the said sale by auction, the said E. F. was declared the highest bidder for and became the absolute purchaser of the messuages, lands, and hereditaments hereinafter described, and hereby assured or intended so to be, and paid the sum of £           , as a deposit, to the said G. H., who has since paid the same into the Bank of England, with the privity of the Accountant-General of the said Court, to the credit of the said cause. And whereas, the chief clerk of the said judge to whose court the said cause is attached, duly certified the result of the said sale, by his certificate, dated the day of           , and the said certificate was approved and signed by the said judge on the            day of           , and has been since duly filed in the said court. And whereas, by an order of the said court, dated the day of           , and made in the said cause and matter, it was ordered that the said E. F. (*purchaser*) should, on or before the            day of           , pay the sum of £           , the balance of the said purchase-money of £           , after deducting the said deposit of £            into the Bank of England, with the privity of the



Accountant-General of the said court, to an account to be entitled, 'The produce of the sale of the real estate of \_\_\_\_\_, deceased;' and that all proper parties should concur in the conveyance to the said E. F. And whereas, in pursuance of the said order, the said E. F. did, on the \_\_\_\_\_ day of \_\_\_\_\_, pay the said sum of £ \_\_\_\_\_ into the Bank of England, with the privity of the Accountant-General of the said Court, to the credit of the said cause, to an account entitled, 'The produce of the sale of the real estate of

PRECEDENT 7.  
CONVEYANCE UNDER DECREE.

and of such payment accordingly.

\_\_\_\_\_, deceased,' as appears by the receipt of one of the cashiers of the said Bank and the certificate of the Accountant-General, dated respectively the \_\_\_\_\_ day of \_\_\_\_\_. Now this Indenture witnesseth, that in pursuance of the said order, and for the purpose of carrying into effect the said contract and sale, and in consideration of the said sum of £ \_\_\_\_\_ (*purchase-money*), paid by the said E. F. to the said G. H. and into the Bank as hereinbefore mentioned, They the said A. B. and C. D. as such trustees as aforesaid, Do and each of them Doth by these presents, grant and convey unto the said E. F. (*purchaser*), his heirs and assigns, All, &c. (*parcels, general words for farms, estate clause*), To have and To hold the said messuages, lands, hereditaments, and premises hereby assured or intended so to be, unto and to the use of the said E. F. (*purchaser*), his heirs and assigns for ever. (*Declaration against dower, covenant by trustees that they have not incurred.*) In witness, &c.

Testatum.

Habendum.

## 8.

*Conveyance to a Railway Company by a Vendor  
Seised in Fee.*PRECE-  
DENT 8.CONVEY-  
ANCE TO  
RAILWAY  
COMPANY.Parties.  
Recital of  
seisin of  
vendor.Of con-  
tract.

Testatum.

This indenture, made, &c., between A. B. of, &c. (*vendor*), of the one part, and 'The Railway Company' (hereinafter called 'the said Company'), of the other part. Whereas the said A. B. (*vendor*) is seised of the messuages, lands, and hereditaments hereinafter described and hereby assured or intended so to be, for an estate of inheritance in fee simple. And whereas, the said Company having occasion to take the said messuages, lands, and hereditaments for the purposes of their railway and works authorised by 'The Railway Act, 18', have under the powers of the said special act and the acts incorporated therewith, or some of them, contracted with the said A. B. (*vendor*), for the absolute purchase of the said messuages, lands, and hereditaments at the price of £ , which sum is to include the value of all houses and buildings, and all timber and trees thereon, and all mines and minerals thereunder, and also compensation for damage caused by severance or for injuriously affecting other property of the said A. B. (*vendor*), and also in full satisfaction for all accommodation and other works, other than and except the accommodation and other works specified in the first schedule hereto. Now this Indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of £ - sterling, to the said A. B. (*vendor*), now truly paid by the said company, the receipt, &c., He the said A. B. (*vendor*) Doth by these presents grant and convey unto the

said Company All (*parcels*), which messuages, lands, and hereditaments are delineated in the plan drawn in the margin of these presents, and thereon coloured red, and in the same plan and also in the plans and books of reference of the said parish of , are distinguished by the numbers respectively: Together with all mines and minerals thereunder, and trees, and timberlike trees thereon. And all, &c. (*general words for farms, estate clause.*) To have and To hold the said messuages, lands, hereditaments, and premises hereby assured, or intended so to be, unto the said Company, their successors and assigns, for ever. (*Covenants for title; covenant to produce deeds.*) In witness, &c.

PRECEDENT 8.  
CONVEYANCE TO RAILWAY COMPANY.  
Parcels.

Habendum.

The first schedule above referred to. (*Accommodation works.*) Schedules.

The second schedule above referred to. (*Deeds and documents.*)

9.

*Conveyance by Trustees of Settlement in Exercise of their Powers of Sale and Exchange.*

This Indenture made, &c., Between , of, &c., and , of, &c. (*trustees*), of the first part , of, &c. (*tenant for life*), of the second part, and , of, &c. (*purchaser*), of the third part. [*Recite settlement, setting out powers of sale and exchange.*] And Whereas the said and (*trustees*), at the request and by the direction of the said (*tenant for life*), testified by his signature of these presents have contracted with the said (*purchaser*) for the absolute sale to him of the piece or parcel of land and hereditaments hereinafter described and hereby assured, or intended so to be,

PRECEDENT 9.  
CONVEYANCE BY TRUSTEES OF SETTLEMENT.  
Parties.  
Recital of settlement.  
Of contract.

PRECE-  
DENT 9.

CONVEY-  
ANCE BY  
TRUSTEES  
OF SETTLE-  
MENT.

Testatum.

and the appurtenances (being part of the hereditaments holden subject to the said powers of sale and exchange), free from incumbrances, for the price of £ . Now this Indenture witnesseth, that in pursuance and performance of the said recited contract, and in consideration of the sum of £ .

sterling to the said and (*trustees*), at the request and by the direction of the said (*tenant for life*), testified by his signature of these presents, now truly paid by the said (*purchaser*), and being in full for the absolute purchase of the said piece or parcel of land and hereditaments hereinafter described and hereby assured or intended so to be, and their appurtenances, and the inheritance in fee simple of the same discharged from all incumbrances, the receipt of which said sum of £ sterling, they the said

and (*trustees*) do hereby acknowledge, and therefrom for ever release the said (*purchaser*), his heirs, executors, administrators, and assigns, and by virtue and in exercise of the hereinbefore recited powers of sale and exchange, and of every or any other power or authority in any wise enabling them or either of them in such behalf, They the said and (*trustees*), at such request, and by such direction as aforesaid, (testified as aforesaid), Do and each of them Doth by

Revocation  
of uses,

this deed or writing, under their respective hands and seals, absolutely revoke all and singular the uses, trusts, and powers, in the hereinbefore recited settlement contained and now subsisting of and in the piece or parcel of land and hereditaments hereinafter described and their appurtenances, and at the like request and by the like direction (testified as aforesaid), Do and each of them Doth by this deed or writing direct, limit, and appoint that the said piece

and new  
appoint-  
ment.

or parcel of land and hereditaments hereinafter described, and the appurtenances shall henceforth remain, continue, and be to the use of the said (*purchaser*), his heirs and assigns for ever. And this Indenture further witnesseth, that for the considerations aforesaid They the said and (*trustees*), at the request and by the direction of the said (*tenant for life*), testified as aforesaid, Do and each of them Doth by these presents grant and convey, and He the said (*tenant for life*), Doth by these presents grant and confirm unto the said (*purchaser*), his heirs, and assigns, All (*parcels*) And all, &c. (*general words for farms*). And all the estate, &c., To have and To hold the said piece or parcel of land, hereditaments, and premises hereby assured, or intended so to be, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs, and assigns, for ever. (*Covenant by trustees that they have done no act to incumber, covenants by tenant for life for title*). In witness, &c.

PRECEDENT 9.

CONVEYANCE BY TRUSTEES OF SETTLEMENT.

Further testatum.

Conveyance.

Haben-dum.

Covenants.

## 10.

*Surrender of Copyhold Hereditaments (a).*

The manor of , } Be it remembered  
in the county of . } that on the  
day of , in the year of our Lord 18 ,  
of, &c. (*vendor*), came before me ,  
esquire, steward of the said manor, and for carrying

PRECEDENT 10.

SURRENDER.

(a) The surrender is usually prepared by the steward of the manor, and rarely submitted to counsel. (Prior, Conv. 821 n.)

Preparation of surrender.

In the absence of a special custom to that effect, the lord of a manor cannot be compelled to accept a surrender to such uses as the purchaser shall appoint, and in default to him in fee. (Flack v. Master, &c., of Downing College, 13 C. B. 945.)

Lord cannot be compelled to accept surrender to uses.

PRECE-  
DENT 10.  
SURREN-  
DER.  
Statement  
of contract.

Surrender  
out of  
court.

into effect a contract made and entered into by the said (*vendor*) with \_\_\_\_\_, of, &c. (*purchaser*), for the sale to him of the copyhold hereditaments hereinafter described, and the customary fee simple and inheritance thereof; and in consideration of the sum of £ \_\_\_\_\_ sterling to the said (*vendor*), paid by the said (*purchaser*), at the time of making this surrender; He, the said (*vendor*), did out of court surrender into the hands of the lord of the said manor, by the acceptance of the said steward, according to the custom of the said manor, All (*parcels*) (to which said premises the said (*vendor*) was admitted tenant at a court holden for the said manor on the \_\_\_\_\_ day of \_\_\_\_\_), And all the estate, &c., To the use of the said (*purchaser*), his heirs and assigns, at the will of the lord, according to the custom of the said manor, and by and under the rents, suits, and services therefore due, and of right accustomed.

Taken and accepted before me, \_\_\_\_\_ steward.

# 11.

## *Deed of Covenants for Title on Surrender of Copyholds on Sale (a).*

PRECE-  
DENT 11.

DEED OF  
COVE-  
NANTS OF  
COPY-  
HOLDS.

Parties  
Recital of  
admit-  
tance.

Of con-  
tract.

Covenants  
on sale of  
freeholds  
and copy-  
holds.

This Indenture made, &c., between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part. (*Recite admittance to copyhold property.*) And whereas the said A. B. has contracted with the said C. D. for the absolute sale to

(a) Where copyholds are sold together with freeholds, the covenants for title are usually extended to both properties; but where copyholds are sold alone, it is not often thought worth while to have a deed merely for the sake of the covenants, which are rarely found of much practical value. (Hayes' Conc. Conv. 211 n.)

him of the said copyhold, , and hereditaments, for the price of £ . And whereas, in pursuance and part performance of the said recited contract, and in consideration of the said sum of £ the said A. B. has, on the day of the date and immediately before the execution of these presents, out of court, surrendered the said copyhold

PRECEDENT 11.

DEED OF COVENANTS OF COPYHOLDS.

Of surrender out of court.

and hereditaments to the use of the said C. D., his heirs and assigns, at the will of the lord, according to the custom of the said manor, and by and under the rents, suits, and services therefore due, and of right accustomed. Now this Indenture witnesseth that, in pursuance and further performance of the said recited contract, and in consideration, &c. (*Covenants for title.*) In witness, &c.

Testatum.

Covenants for title.

12.

*Assignment of Leasehold Messuages and Premises.*

This Indenture made, &c., between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. Whereas by indenture, dated the day of , and made between E. F. of the one part, and G. H. of the other part, the said E. F. did demise unto the said G. H. All, &c. (*parcels*) and their appurtenances: To hold the same unto the said G. H., his executors, administrators, and assigns, from the day of

PRECEDENT 12

ASSIGNMENT OF LEASEHOLDS.

Parties.

Recital of lease.

during the term of years, at the yearly rent of £ , payable half-yearly, and under and subject to the covenants and conditions therein contained, and on the part of the lessee or assignee to be observed and performed. And whereas under and by virtue of divers mesne assignments and assurances in the law, and ultimately of an indenture dated the

Recital of assignments.

PRECEDENT 12.  
 ASSIGNMENT OF  
 LEASEHOLDS.

Recital of  
 contract.

Testatum.

Parcels.

Consideration for  
 assignment  
 of lease.

Where  
 property  
 known by  
 a different

day of \_\_\_\_\_, and made between X. Y. of  
 the one part, and the said A. B. of the other part,  
 the (*short description of parcels*) comprised in  
 and demised by the hereinbefore recited indenture  
 of lease, became assigned unto the said A. B., his  
 executors, administrators, and assigns, for the residue  
 of the said term of \_\_\_\_\_ years, by the said indenture  
 of lease granted, subject to the payment of the rent  
 thereby reserved, and the observance and performance  
 of the covenants and conditions in the same lease  
 contained. And whereas the said A. B. has contracted  
 with the said C. D. for the absolute sale to him of the  
 \_\_\_\_\_ which were comprised in or are held  
 under or subject to the hereinbefore recited indenture  
 of lease, for all the residue of the said term of  
 \_\_\_\_\_ years, but subject to the aforesaid rent and covenants  
 for the price of £ \_\_\_\_\_. Now this Indenture witness-  
 eth, that in pursuance of the said contract, and in  
 consideration (a) of the sum of £ \_\_\_\_\_ sterling to  
 the said A. B., now truly paid by the said C. D., and  
 being in full for such absolute purchase as aforesaid,  
 the receipt of which said sum he the said A. B. doth  
 hereby acknowledge, and therefrom for ever release  
 the said C. D., his executors, administrators, and  
 assigns: He, the said A. B., doth by these presents  
 assign and transfer unto the said C. D., his executors,  
 administrators, and assigns, All and singular the  
 (*short description of parcels*) (b) which were com-

(a) No consideration is necessary to support an assignment of a lease, as the rent and covenants are sufficient for that purpose. (1 Crabb, Conv. 259.)

(b) Where at the time of the assignment the property is known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice thereof in the



prised in or demised by or are now held under or by virtue of or subject to the hereinbefore recited indenture of lease, dated the            day of            , and their respective rights, members, and appurtenances. And all the estate, right, title, interest, trust property, benefit, claim, and demand whatsoever or howsoever, of him the said A. B., of, in, to, out of, or upon the same or any part thereof. To have and To hold the said            and premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, for all the now residue of the said term of            years, granted by the hereinbefore recited indenture of lease, but subject as from the            day of            to the payment of the rent and the observance and performance of the covenants and conditions reserved by or contained in the said indenture, and on the part of the lessee or assignee to be paid, observed, and performed. (*Covenants for title. Covenant by C. D. for payment of rent and performance of covenants.*) In witness, &c.

PRECEDENT 12.

ASSIGNMENT OF LEASEHOLDS.  
Estate clause.Haben-  
dum.

Covenants.

## 13.

*Lease by One Purchaser to another in pursuance of Condition of Sale for that Purpose on Sale by Auction.*

This Indenture made, &c., between            , of, &c. (hereinafter referred to as 'the said lessor'), of the first part            , of, &c. (*vendor*), of the

PRECEDENT 13.

LEASE ON SALE BY AUCTION.  
Parties.

operative part, this should be done by way of addition to the old description. (1 Prid. Conv. 203 n.)

description.

The word 'premises' should not be used before the 'general words,' except where, in assignments of leaseholds, the parcels are described in the recitals. (Housman's Handbook, 336.)

Where 'premises' should be used.

PRE-  
CEDENT 13.

LEASE ON  
SALE BY  
AUCTION.  
Recitals—  
of lease.  
Of sale by  
auction.

That pur-  
chaser of  
lot 1 should  
grant un-  
derlease.

Of assign-  
ment to  
purchaser  
of lot 1.

second part, and , of, &c. (hereinafter referred to as 'the said lessee'), of the third part. (*Recite indenture of lease.*) And whereas the said messuages and premises were, on the day of last, put up for sale by public auction by the said (*vendor*) in two lots, according to printed particulars and conditions of sale, and at such auction the said lessor was the highest bidder for and declared the purchaser of lot 1 for the price of £ , and the said lessee was the highest bidder for and declared the purchaser of lot 2, being the hereditaments intended to be hereby demised, for the price of £ . And whereas it was provided by the said conditions that the said ground rent of £ per annum should be apportioned equally between the two lots, and that, in the event of both the said lots being sold to different purchasers, the purchaser of lot 1 should take an assignment of the hereditaments comprising both lots, and grant an underlease to the purchaser of lot 2 for the whole of the term, less three days, at such apportioned rent. And whereas, by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents, and made between the said (*vendor*), of the one part, and the said lessor of the other part, in consideration of the said sum of £ paid by the said lessor, as therein mentioned, the said messuages and premises were assigned unto and are now vested in the said lessor, his executors, administrators, and assigns, for all the residue of the said term of years, granted by the hereinbefore recited indenture of lease, subject to the said rent of £ per annum thereby reserved, and to the covenants

and conditions therein contained. Now this Indenture witnesseth that, in pursuance of the said contract, and in consideration of the sum of £ sterling to the said (*vendor*), now paid by the said lessee, and being in full for the absolute purchase of the said hereditaments comprised in lot 2 of the said particulars as aforesaid, the receipt of which said sum he, the said (*vendor*), doth hereby acknowledge, and therefrom for ever release the said lessee, his executors, administrators, and assigns, He the said lessor, at the request and by the direction of the said (*vendor*) (testified by his executing these presents), Doth by these presents grant, demise, and lease unto the said lessee, his executors, administrators, and assigns, All (*parcels*), together with all cellars, sollars, paths, passages, lights, easements, waters, watercourses, profits, and advantages whatsoever, to the said messuages and premises belonging or appertaining. To have and To hold the said messuages and premises hereby demised or intended so to be, unto the said lessee, his executors, administrators, and assigns, from the      day of      , for the term of      years, less three days, Yielding and paying therefor yearly, and every year during the same term, unto the said lessor, his executors, administrators, and assigns, the yearly sum of £      , &c. (*Reservation of rent. Covenants and proviso for re-entry the same as in the original lease.*) In witness, &c.

PRECEDENT 13.

LEASE ON  
SALE BY  
AUCTION.  
Testatum.

Parcels.

Habendum.

Reservation of rent  
and covenants.

## 14.

*Grant of the Perpetual Advowson of the Vicarage of  
, in the County of (a).*

PRECE-  
DENT 14.

GRANT OF  
ADVOW-  
SON.

Parties.

Recitals—  
of grant of  
advowson.

Of con-  
tract.

Testatum.

This Indenture made, &c., between ,  
of, &c. (*grantor*), of the one part, and ,  
of, &c. (*grantee*), of the other part. (*Recite  
grant of the advowson to (grantor).*) And whereas  
the said (*grantor*) has contracted with the said  
(*grantee*) for the absolute sale to him of the said  
advowson or perpetual right of presentation, tithes,  
or rent-charge hereinafter described and hereby  
granted, or intended so to be, and the inheritance in  
fee-simple of the same, discharged from all incum-  
brances except the incumbency of the Rev. ,  
clerk, the present incumbent thereof, for the price or  
sum of £ sterling. Now this Indenture wit-  
nesseth that, in pursuance and performance of the  
said recited contract, and in consideration of the sum  
of £ sterling to the said (*grantor*), now truly  
paid by the said (*grantee*), and being in full for  
such absolute purchase as aforesaid, the receipt of  
which said sum of £ sterling he, the said  
(*grantor*), doth hereby acknowledge and therefrom  
for ever release the said (*grantee*), his heirs and  
assigns, He, the said (*grantor*), Doth by these  
presents grant and confirm unto the said (*grantee*),

Difference  
between  
sale of  
advowson  
and next  
presenta-  
tion.

(a) It should be observed that the sale of an advowson is different to that of a next presentation. The sale of a presentation during the vacancy of the church is void, being prohibited by the law against simony; but the advowson may be sold during a vacancy, though the grant will not have effect as to the existing presentation. (*Grey v. Hesket*, Amb. 268.)

his heirs and assigns, All and singular the advowson or perpetual right of patronage and presentation, donation, or collation of, in, and to the vicarage and parish church of \_\_\_\_\_, in the county of \_\_\_\_\_, with all and singular tithes, tenths, rent-charge for which tithes have been commuted, commodities, advantages, emoluments, hereditaments, rights, members, and appurtenances to the said advowson, patronage, vicarage, or church belonging or in anywise appertaining. (*And all the estate, &c.*) To have and To hold the said advowson, perpetual right of patronage or presentation, tithes, rent-charge, hereditaments, and premises hereby granted, or intended so to be, with their appurtenances (but subject to the present incumbency of the said \_\_\_\_\_), unto the said (*grantee*), his heirs and assigns, for ever. (*Covenants for title.*) In witness, &c.

PRECE-  
DENT 14.  
GRANT OF  
ADVOW-  
SON.  
Descrip-  
tion of  
advowson.

Haben-  
dum.

Covenants.

15.

*Bill of Sale of Furniture and Effects.*

This indenture made, &c., between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part. Whereas the said A. B. (*vendor*) is possessed of the goods, chattels, furniture, and effects in and about his dwelling-house situate and being No. \_\_\_\_\_, in the county of \_\_\_\_\_, which are specified or mentioned in the schedule to these presents. And whereas the said A. B. (*vendor*) has contracted with the said C. D. (*purchaser*) for the absolute sale to him of the said goods, chattels, furniture, and effects for the price of £ \_\_\_\_\_. Now this Indenture witnesseth that, in pursuance of the said contract, and in consideration, &c., He, the said

PRECE-  
DENT 15.  
BILL OF  
SALE.  
Parties.  
Recitals—  
of posses-  
sion of fur-  
niture.

Of con-  
tract.

Testatum.

PRECE-  
DENT 15.

BILL OF  
SALE.

Description  
of  
goods and  
chattels.

Haben-  
dum.

Covenants  
for title.

Goods need  
not be set  
out in  
detail.

A. B. (*vendor*) Doth by these presents assign unto the said C. D. (*purchaser*), his executors, administrators, and assigns, All and singular the goods, chattels, furniture, and effects in or about the said dwelling-house of him the said A. B., situate and being No.

aforesaid, which are specified or mentioned in the schedule to these presents (*a*). And all the right, title, and property of him the said A. B. (*vendor*), of, in, to, out of, or upon the same, or any part thereof. To have and To hold the said goods, chattels, furniture, and effects hereby assigned, or intended so to be, unto and by the said C. D. (*purchaser*), his executors, administrators, and assigns, absolutely for his and their own absolute use and benefit. And he the said A. B. (*vendor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. (*purchaser*), his executors, administrators, and assigns, that he the said A. B. now hath in himself good right or full power to assign the said goods, chattels, furniture, and effects unto the said C. D. (*purchaser*), his executors, administrators, and assigns, and that the same shall henceforth be peaceably held and enjoyed by him and them, and that the same are now free from any charge, mortgage, or other incumbrance; and that he the said A. B. (*vendor*) will do any further or other act for the better assigning the said premises

(*a*) An enumeration of the articles in any manner is not absolutely requisite (*Jarman v. Woolloton*, 3 T. R. 618), and, where numerous, is often inconvenient. All that is required is, that the goods should be so designated as to be capable of being identified, and for that purpose it is sufficient that they are described as the goods in a certain house, and the question what articles formed part of the goods so described, if raised, must be settled by extrinsic evidence. (6 Byth. & Jarm. 277 n.)

unto the said C. D. (*purchaser*), his executors, administrators, or assigns, as by him or them shall be required. In witness, &c.

The Schedule above referred to.

(*Furniture and Effects.*)

PRECEDENT 15.  
BILL OF SALE.  
Schedule.

16.

*Conveyance by Grantor to Trustees of Settlement by way of Exchange (a).*

This Indenture made, &c.: Between John Snow of, &c. (*grantor*), of the first part, Edward Middleton of, &c. (*tenant for life*), of the second part, and Josiah

PRECEDENT 16.  
CONVEYANCE BY GRANTOR ON EXCHANGE.  
Parties.  
Exchange at Common Law.

(a) An exchange is an assurance at common law, by means of which two persons severally seised of lands, mutually grant them in exchange, each his own land for the land of the other. (4 Byth. & Jarm. 1.) This exchange at common law was a very special kind of assurance, and involved abstruse learning and technicality, but it has become obsolete. In early times a deed of exchange was a brief and simple instrument. We have seen at the British Museum a deed of exchange of the reign of Edward I., not much larger than the palm of the hand. Exchanges are now effected by means of mutual conveyances, which have none of the peculiar properties of the assurance at common law; nor are they subject to the same rules, though such transactions are in ordinary language denominated exchanges. (Ibid 5. *Bartram v. Whichcote*, 6 Sim. 86, see p. 92.) The mutual conveyances are generally effected by two deeds, though they may be contained in one instrument. It is, however, much better to have separate conveyances, as each of the parties will then have his own deed. And where there is only one instrument, it must be executed in duplicate, and therefore the saving thus effected will be inconsiderable.

By mutual conveyances.

Exchanges are now often effected by an application to the Inclosure Commissioners, under the Acts for the inclosure, exchange, and improvement of lands, namely, 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; and 22 & 23 Vict. c. 43. (Hayes' Conc. Conv. 693, note by Coltman.)

Under Inclosure Acts.

PRECE-  
DENT 16.

CONVEY-  
ANCE BY  
GRANTOR  
ON EX-  
CHANGE.

Recitals—  
of title.  
Of contract  
for ex-  
change.

How ex-  
changes to  
be carried  
out.

Of convey-  
ance of  
even date.

Testatum.

Tomlinson of, &c., and Wm. Stracey of, &c. (*trustees*), of the third part. (*Recite conveyance to John Snow, settlement, setting out the powers of sale and exchange fully.*) And whereas the said Josiah Tomlinson and Wm. Stracey, at the request and by the direction of the said Edward Middleton, testified by his executing these presents, have by virtue of the powers of sale and exchange so contained in the hereinbefore recited indenture of settlement, dated the       day of       , contracted with the said John Snow, for the exchange with him of the pieces or parcels of land and hereditaments mentioned or described in the second schedule to these presents, and their appurtenances, in return for the pieces or parcels of land and hereditaments described in the first schedule to these presents and their appurtenances. And whereas it has been agreed, that the said proposed exchanges should be effectuated by reciprocal assurances of the lands and hereditaments respectively, to be given in or by way of exchange. And whereas, in pursuance and part performance of the said recited agreement in such behalf and by means of an indenture bearing, or intended to bear, even date with these presents, and made, or intended to be made, between the said Josiah Tomlinson and Wm. Stracey of the first part, the said Edward Middleton of the second part, and the said John Snow of the third part, in consideration of the conveyance made, or intended to be made, by these presents, the said pieces or parcels of lands and hereditaments mentioned or described in the said second schedule to these presents, and their appurtenances, at the request and by the direction and with the concurrence of the said Edward Middleton, have been or will be appointed unto the said John Snow, his heirs and assigns. Now this In-



denture witnesseth, that in pursuance and performance of the said recited agreement in such behalf, and in consideration of the conveyance so made, or intended to be made, by the said indenture, bearing or to bear even date with these presents, He, the said John Snow, at the request and by the direction of the said Edward Middleton testified as aforesaid, Doth by these presents grant, convey, and confirm unto the said Josiah Tomlinson and Wm. Stracey, their heirs and assigns, All and singular the pieces or parcels of land and hereditaments, mentioned or described in the said first schedule to these presents. And all, &c. (*general words*). (*And all the estate, &c.*) To have and To hold the said pieces or parcels of land, hereditaments, and premises hereby assured, or intended so to be, unto the said Josiah Tomlinson and Wm. Stracey, their heirs and assigns, for ever; Nevertheless, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, and declarations, as in and by the hereinbefore recited indenture of settlement, dated the       day of       , were limited, expressed, declared, and contained, or by any exercise of the said powers therein contained have been limited, expressed, or declared of and concerning such of the said lands and hereditaments, conveyed and settled by the same indenture of settlement, as have been or are so to be given in or by way of exchange unto the said John Snow as aforesaid, or as near thereto as circumstances will admit. (*Covenants by John Snow for title and for production of deeds.*) In witness, &c,

PRECEDENT 16.

CONVEYANCE BY GRANTOR ON EXCHANGE.

Parcels.

General words and estate clause. Habendum.

To uses of settlement.

Covenants.

Schedules.

The first schedule above referred to.

The second schedule above referred to.

## 17.

*Conveyance by Trustees of Settlement to Grantor by way of Exchange.*PRECE-  
DENT 17.CONVEY-  
ANCE BY  
TRUSTEES  
ON EX-  
CHANGE.

Parties.

Recitals—  
of title.Of inden-  
ture of  
even date.

Testatum.

This Indenture made, &c., between Josiah Tomlinson of, &c., and Wm. Stracey of, &c. (*trustees*), of the first part, Edward Middleton of, &c. (*tenant for life*), of the second part, and John Snow of, &c. (*grantor*), of the third part. (*Recitals similar to last deed, beginning with settlement.*) And whereas in pursuance and part performance of the said recited agreement in such behalf, and by means of an indenture bearing, or intended to bear, even date with these presents, and made, or intended to be made, between the said John Snow of the first part, the said Edward Middleton of the second part, and the said Josiah Tomlinson and William Stracey of the third part, in consideration of the conveyance made, or intended to be made, by these presents, the pieces or parcels of land and hereditaments mentioned or described in the second schedule to these presents and their appurtenances, have, at the request and by the direction of the said Edward Middleton, been conveyed to such and the same uses, &c. Now this Indenture witnesseth, that in pursuance and towards performance of the said recited agreement, and by virtue and in exercise of the power or authority for such purpose contained in the hereinbefore recited indenture of settlement, dated the            day of           , and of every or any other power or authority in anywise enabling them in such behalf, They the said Josiah Tomlinson and Wm. Stracey, at the request and by

the direction of the said Edward Middleton (testified as aforesaid), Do and each of them Doth by this deed or instrument in writing, sealed and delivered by them the said Josiah Tomlinson and Wm. Stracey, in the presence of and attested by the two credible persons, whose names as witnesses attesting such sealing and delivery are intended to be by them subscribed at the foot of the memorandum of such attestation endorsed on these presents, absolutely revoke, determine, and make void all and every the uses, trusts, powers, and provisions in and by the hereinbefore recited indenture of settlement, dated the       day of       , limited, declared, and expressed concerning the pieces or parcels of land and hereditaments mentioned or described in the said first schedule to these presents and their appurtenances. And this Indenture further witnesseth, that in pursuance and further performance of the said recited agreement, and in consideration of the conveyance so made, or intended to be made, by the said indenture, bearing, or intended to bear, even date with these presents, They, the said Josiah Tomlinson and William Stracey, at such request and by such direction of the said Edward Middleton (testified as aforesaid), and by virtue and in exercise and execution of every such power or authority as aforesaid, Do and each of them Doth by these presents limit, declare, direct, and appoint that the said pieces or parcels of land and hereditaments mentioned or described in the said first schedule to these presents and their appurtenances, shall henceforth go, remain, and be to the use of the said John Snow, his heirs and assigns, for ever. (*Covenants by Edward Middleton (tenant for life), for title and for production*

PRECEDENT 17.

CONVEYANCE BY TRUSTEES ON EXCHANGE.

Revocation of old uses.

New appointment.

Covenants.

**PRECE-  
DENT 17.****CONVEY-  
ANCE BY  
TRUSTEES  
ON EX-  
CHANGE.**

Schedules.

*of deeds. Covenant by Josiah Tomlinson and William Stracey (trustees) against incumbrances.)*

The first schedule above referred to.

The second schedule above referred to.

## 18.

**PRECE-  
DENT 18.****DEED OF  
PARTITION  
OF FREE-  
HOLDS.**

Parties.

Recitals of  
seisin of  
tenants in  
common.*Deed of Partition of Freehold Messuages and Lands.*

This Indenture made &c. between A. B. of &c.  
(*tenant in common*) of the first part, C. D. of &c.  
(*tenant in common*) of the second part, and E. F.  
of &c. (*grantee to uses*) of the third part. Whereas,  
under and by virtue of the last will and testament of  
of &c., dated the       day of       , and

proved in the Principal Registry of Her Majesty's  
Court of Probate on the       day of       , the said  
A. B. and C. D. are seised as tenants in common in fee of  
the messuages and hereditaments hereinafter described,  
and hereby assured or intended so to be. And  
whereas the said A. B. and C. D. have determined  
to effect a partition of the said messuages and here-  
ditaments in manner hereinafter expressed. Now  
this Indenture witnesseth, that in pursuance of the  
said determination in such behalf, and in consideration  
of the premises, They the said A. B. and C. D. Do and  
each of them Doth by these presents grant and convey  
unto the said E. F., his heirs and assigns, All and  
singular the messuages, lands, tenements, and here-  
ditaments, which are mentioned or described in the  
first and second schedules to these presents, (a) and

Of desire to  
effect par-  
tition.

Testatum.

Parcels.

Descrip-  
tion of  
property on  
partition.

(a) It is much more convenient to have the parcels in schedules than firstly and secondly described. Before a partition is effected a survey should be made of the estate, in order to supply the modern description. The old description also had better be inserted in the body of the deed. (5 Dav. Conv. 482 n.)

their respective rights, members, and appurtenances. And all, &c. (*general words for farms. And all the estate, &c.*): To have and To hold the said messuages, lands, hereditaments, and premises, hereby assured, or intended so to be, unto the said E. F., his heirs and assigns: Nevertheless, as to the messuages, lands, and hereditaments mentioned or described in the said first schedule to these presents, to the use of the said A. B., his heirs and assigns, for ever: And as to the messuages and hereditaments mentioned or described in the said second schedule to these presents, to the use of the said C. D., his heirs and assigns, for ever, and to, for, and upon no other use, trust, intent, or purpose whatsoever. And each of them, the said A. B. and C. D., doth hereby declare, that no widow, whom he respectively may leave, shall be entitled to dower out of the said messuages, hereditaments, and premises hereby assured, or intended so to be, or any part thereof respectively. (*Covenant for further assurance by A. B. and C. D. with E. F.*) In witness, &c.

PRECEDENT 18.

DEED OF PARTITION OF FREEHOLDS.

General words and estate clause.

Haben-dum.

To uses in severalty.

Declaration against dower.

Covenant for further assurance.

Schedules.

The first schedule above referred to.

The second schedule above referred to.

## 19.

*Assignment on Partition of Leasehold Messuages and Premises (a).*

This Indenture made &c. between A. B. of &c. of the one part, and C. D. of &c. of the other part. (*Recite indenture of lease, and will by which property*

PRECEDENT 19.

PARTITION OF LEASEHOLDS.

Parties.

Recitals of title.

(a) Leasehold property is not so often vested in joint-tenants or tenants in common as freehold property, but where such is the case, and a partition is desired, then, as leaseholds cannot be assigned to

Modes of partition of leaseholds.

PRECEDENT 19.

PARTITION  
OF LEASE-  
HOLDS.

Of agree-  
ment to  
effect  
partition.

Of inden-  
ture of  
even date.

Of agree-  
ment as to  
custody of  
deeds.

Testatum.

*bequeathed to A. B. and C. D. as tenants in common).*

And whereas the said A. B. and C.D. have agreed to effect a partition of the said leasehold messuages and premises in the following manner (that is to say): That the said A. B. shall have and take in severalty the said messuages and premises , and

that the said C.D. shall have and take in severalty the said messuages and premises , and that

the said A. B. shall pay to the said C. D. the sum of £ by way of equality of partition. And where-

as, in pursuance and part performance of the said recited agreement in such behalf, and by indenture bearing even date with and executed at the time of the execution of these presents, and made between the said C. D. of the one part, and the said A. B. of the other

part, in consideration of the assignment made by these presents, and of the sum of £ , the said C. D. has assigned unto the said A. B. one moiety or equal half-part of and in the said messuages and premises

, for the residue of the term for which the same are holden, but subject as therein mentioned.

And whereas it has been agreed that the deeds and writings specified in the schedule hereto shall remain in the custody of the said A. B. upon his entering into such covenant for production of the same, as

hereinafter expressed. Now this Indenture witnesseth that, in pursuance and further performance of the said

a releasee to uses, a different course must be pursued. Either the parties may assign and release their respective shares to one another, or all the shares may be assigned to a trustee, upon trust to reassign the allotted parts to the several tenants in common or joint-tenants. (6 Byth. & Jarm. 618 n.) The objection to the latter method formerly was, that two deeds were necessary, and though such impediment has now been removed, yet the former course is, we think, preferable.

recited agreement in such behalf, and in consideration of the said assignment of even date herewith, He, the said A. B., Doth by these presents assign and transfer unto the said C. D., his executors, administrators, and assigns, All that the one undivided moiety or equal half-part or other the part or share of him the said A. B., of and in All those messuages and premises situate and distinguished as , and now in the several occupations of and

PRECEDENT 19.

PARTITION OF LEASEHOLDS.

Parcels.

, and of and in their rights, members, and appurtenances. And all the estate, right, title, interest, trust property, benefit, claim, and demand whatsoever or howsoever, of him the said A. B., of, in, to, out of, or upon the same, or any part thereof. To have and To hold the said messuages and premises hereby assigned, or intended so to be, and the rents and profits thereof as from the day of , unto and by the said C. D., his executors, administrators, and assigns, for all the now residue of the said term of years granted by the hereinbefore recited indenture of lease, but subject to the payment of £ , one half-part of the rent, and to the performance of the covenants therein contained, so far as they affect the said leasehold premises hereby assigned, or intended so to be. And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, or assigns, will henceforth pay one equal half-part of the said rent of £ by the hereinbefore recited indenture of lease reserved, and perform and observe all the covenants and conditions therein contained, which by the lessee, his executors, administrators, or assigns, henceforth are

Estate clause.

Habendum.

Covenant by C. D. to pay rent and perform covenants.

PRECE-  
DENT 19  
PARTITION  
OF LEASE-  
HOLDS.

Covenants  
by A. B.:  
further  
assurance,

and to pro-  
duce deeds.

to be observed and performed so far as respects the said messuages and premises hereby assigned, or intended so to be, and will keep the said A. B., his executors and administrators, indemnified against all actions, suits, expenses, and claims on account of the non-payment of the said rent, or any part thereof, or the non-performance or non-observance of the said covenants and conditions, or any of them. And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he, the said A. B., his executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs of the said C. D., his executors, administrators, or assigns, make, do, and execute any act, deed, matter, or thing which may be necessary for further, better, or more satisfactorily assigning the said messuages and premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, for the residue of the term, and in manner aforesaid, as by the said C. D., his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required and be tendered to be made, done, and executed: And also that the said A. B., his executors, administrators, or assigns, unless hindered or prevented by fire or some other inevitable accident, will at any time hereafter, at the request and costs of the said C. D., his executors, administrators, or assigns, produce and show forth any of the deeds and writings specified in the schedule to these presents, for the proof of the title of the said C. D., his executors, administrators, or assigns, to the said messuages and premises hereby assigned, or intended so to be, and will, at the like request and costs



as aforesaid, furnish and deliver an attested copy, or an abstract or extract of any or either of the same deeds or writings, and suffer the same to be examined with the original. In witness, &c.

The schedule above referred to,  
(*Deeds and Writings.*)

PRECE-  
DENT 19.  
PARTITION  
OF LEASE-  
HOLDS.  
Schedule.

## 20.

*Lease of Messuage, Workshops, and Premises in  
London (a).*

This Indenture made &c. between  
of &c. (hereinafter referred to as 'the said lessor')  
of the one part, and of &c. (hereinafter  
referred to as 'the said lessee') of the other part:  
Witnesseth that, in consideration of the yearly rent,

PRECE-  
DENT 20.  
LEASE OF  
HOUSE AND  
WORK-  
SHOPS.  
Parties.  
Testatum.

(a) As leases are executed for temporary purposes only, and they often comprise property of very small value, it is desirable that they should be prepared at the least possible expense, and therefore with as much brevity as consistent with an explicit declaration of the intentions of the parties. (4 Byth. & Jarm. 519 n.)

Leases  
should be  
prepared  
with  
brevity.

As a lease may be made to commence from a future day, there is no particular object in having an agreement for a lease entered into in the first instance. Where, however, there is an agreement, the only safe course, in order to prevent disputes, is to insert in such agreement, almost in full, the covenants and clauses to be contained in the lease itself. In the case of building leases there is an advantage in having an agreement to grant such lease or leases as the builder may designate, because then he can obtain distinct leases of the several properties to his nominees as and when required, a course which will much increase their value, as the respective lessees will not become liable to the consequences of a breach on the part of other than themselves.

Agree-  
ments for  
leases.

In the framing of an underlease, the original lease should not be recited, nor the original lessor made a party, even though his license in writing should be required. This should be given by a separate document. (5 Dav. Conv. 174 n.) The underlease should contain the same covenants and conditions as the original lease, besides, of course, those appropriated to the underlease itself.

How to  
frame  
under-  
leases.

PRECE-  
DENT 20.  
  
LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

Parcels.

General  
words.

Haben-  
dum.

Redden-  
dum.

In demise  
no words  
of limita-  
tion neces-  
sary.

covenants, and agreements hereinafter reserved and contained, and on the part of the said lessee, his executors, administrators, and assigns, to be paid, observed, and performed: He, the said lessor, doth by these presents demise and lease unto the said lessee, his executors, administrators, and assigns (*b*)

All, &c. (*parcels*), all which premises, with the abut-  
tals, boundaries, and dimensions thereof (be such  
dimensions little more or less), are more particularly  
delineated and set forth on the map or plan thereof  
drawn in the margin of these presents, and thereon  
coloured , and are now in the occupation of

. And all ways, waters, watercourses, lights,  
easements, cellars, vaults, areas, and appurtenances to  
the said premises, belonging or appertaining, together  
with the use of all the fixtures and fittings now in,  
upon, or about the said premises. To have and To hold  
the said piece or parcel of ground, messuage, or dwell-  
ing-house, workshops, cottage, buildings, and premises  
hereinbefore expressed to be hereby demised with  
their appurtenances unto the said lessee, his executors,  
administrators, and assigns, from the day of ,  
for the term of years: Yielding and paying  
therefor yearly, and every year during the said term  
hereby granted, the clear yearly rent or sum of £  
sterling by equal quarterly payments, on the day  
of , the day of , the day of ,

(*b*) It is a common practice to annex words of limitation to a demise, though this is strictly not necessary, as none are essential to the creation of a term of years. The words of limitation, therefore, properly speaking, should be omitted in the premises and inserted in the habendum only, as it is the office of the premises to name the grantee and describe the parcels, and of the habendum to limit the estate and duration of the term. (1 Hughes Pr. 469 n.)

and the       day of       in every year, free from all taxes, rates, assessments, and outgoings whatsoever (landlord's property-tax only excepted), the first quarterly payment of the said rent to be made on the       day of       next. (c) And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor, his heirs and assigns, in manner following (that is to say): That he, the said lessee, his executors, administrators, or assigns, shall and will

PRECE-  
DENT 20.  
LEASE OF  
HOUSE AND  
WORK-  
SHOPS.  
Lessee's  
covenants.

(c) The rent ought always to be reserved yearly during the term, and to be made payable on stated days of the month, and not on particular feast-days, and half-yearly or quarterly, as may be agreed upon. The first day on which payment is to be made should always be named. (5 Dav. Conv. 97 n.)

Reserva-  
tion of  
rent.

Where a lease is made under a power by tenant for life, or other person, or by mortgagor and mortgagee, it is the better course to reserve the rent generally, so that it will follow the reversion. It is suggested that, where a lease is made by mortgagor and mortgagee, there should be a power to distrain given to the mortgagor, as otherwise, he being only entitled in equity, and not the legal reversioner, cannot distrain for the rent in arrears. (Ibid. 146 n.) We believe, however, that such is not the usual practice.

Where  
lease made  
under  
power.  
By mort-  
gagor and  
mortgagee.

In leases by tenants in common, a separate rent need not be reserved to each tenant in common, as the law will apportion the rent according to their respective estates. (Ibid. 442 n.)

By tenants  
in com-  
mon.

A net rent means a rent clear of all deductions, to which it would otherwise be liable. (Bennett v. Womack, 7 B. & C. 627). Where a tenant agrees to pay a rent free from all outgoings, the landlord is entitled to a net rent payable free of land-tax and tithe commutation rent-charge. (Parish v. Sleeman, 1 De G. F. and J. 326). Therefore, when it is intended that the lessee should not pay these charges, it should be expressly so stated.

Meaning of  
'net rent.'

The lessee is entitled to deduct from his next payment on account of rent the property-tax he has paid, and the landlord is bound to allow such deduction under a penalty of £50. All contracts, covenants, and agreements made or entered into for payment of rent without allowing the deduction of income-tax, are void. (16 & 17 Vict. c. 34, s. 40).

Lessee en-  
titled to  
deduct  
property-  
tax.

PRECE-  
DENT 20.

LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

to pay  
rent,  
and taxes,

and pro-  
portion of  
expense of  
party-  
walls and  
drains,

and keep  
premises  
in repair,

truly pay or cause to be paid unto the said lessor, his heirs or assigns, the said clear yearly rent or sum of £ , at the times and in manner hereinbefore appointed for payment thereof: And also shall and will, during the said term, bear, pay, and discharge the land-tax (if any), sewers' rate, metropolitan main drainage rates, and all other rates, taxes, duties, assessments, and impositions whatsoever, parliamentary, parochial, or otherwise, which now are, or which shall or may at any time hereafter during the said term, be rated, taxed, charged, assessed, or imposed on the said demised premises, or any part thereof, or on the landlord or tenant in respect thereof (landlord's property-tax only excepted): And also shall and will, when need or occasion shall be and require, pay and allow a reasonable proportion of the charges and expenses, in respect of the said demised premises, of supporting, cleansing, amending, and rebuilding all party-walls, gutters, common sewers, drains, and cesspools, which shall or may be used in common with the occupiers of any contiguous premises, and shall not nor will, during the said term hereby granted, commit any waste, spoil, or destruction on the said premises hereby demised: And also that he the said lessee, his executors, administrators, and assigns, shall and will at all times hereafter, during the continuance of the said term, hereby granted, at his and their own proper expense and costs, when, where, and as often as need or occasion shall be and require, well and substantially repair, amend, uphold, support, sustain, maintain, plaster, point, slate, tile, lead, pave, glaze, paint, paper, whitewash, colour, scour, cleanse, empty, and keep in thorough repair, all and every part of the said messuage or dwelling-house, workshops, cottage,

buildings, and premises hereby demised, together with the fixtures and fittings now in and upon the said demised premises, and all improvements, fixtures, and additions which at any time during the said term hereby granted shall be affixed, erected, or made upon or to the said demised premises, or any part thereof: And moreover shall and will well and sufficiently paint or cause to be painted twice over in good and proper oil and lead colours in the year ending the day of , and thenceforth in every succeeding year during the said term hereby granted, in a workmanlike manner, all the outside wood and ironwork and other places usually or before painted, of or belonging to the said messuage or dwelling-house, workshops, cottage, buildings, and premises hereby demised: And also in every year during the said term hereby granted, in like manner paint twice over, in good and proper oil colours, all the inside wood and ironwork and places usually or before painted of the said messuage or dwelling-house, cottage, workshops, buildings, and premises hereby demised, and whitewash, paper, and colour such parts of the said messuage or dwelling-house, workshops, cottage, buildings, and premises as are usually whitewashed, papered, and coloured respectively: And the said messuage or dwelling-house, workshops, cottage, buildings, and premises hereby demised, and every part thereof, so well and substantially repaired, amended, upheld, supported, sustained, maintained, pointed, slated, tiled, leaded, paved, glazed, painted, papered, whitewashed, coloured, scoured, cleansed, emptied, and kept in thorough repair as aforesaid, shall and will, at the end, expiration, or sooner determination of the said term hereby granted which

PRECE-  
DENT 20.

LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

and paint  
and white-  
wash  
premises,

**PRECE-  
DENT 20.**

**LEASE OF  
HOUSE AND  
WORK-  
SHOPS.**  
and deliver  
up pre-  
mises in  
good state  
of repair.

shall first happen, peaceably and quietly leave, sur-  
render, and yield up to the said lessor, his heirs or  
assigns, together with all doors, wainscots, shelves,  
dressers, drawers, locks, keys, bolts, bars, bells,  
cranks, wires, bell-pulls, staples, hinges, hearths,  
stoves, chimney-pieces, mantel-pieces, chimney jambs,  
footpaces, slabs, covings, windows, sashes, shutters,  
partitions, cisterns, sinks, pumps, pipes, water-  
closets, rails, posts, gates, and all other fixtures, im-  
provements, and additions whatsoever, which are  
now, or which at any time or times during the said  
term hereby granted, shall be fixed, fastened, or  
belong to or used with the said messuage or dwelling-  
house, workshops, cottage, buildings, and premises  
hereby demised, or any part thereof (save and except  
such trade fixtures as shall belong to the said lessee,  
his executors, administrators, or assigns), in a good  
state of repair and condition : And also, that it shall  
be lawful for the said lessor, his heirs and assigns, at  
any time within the last                      years of the said term  
hereby granted, to enter into and upon the said de-  
mised premises, and take a schedule or inventory of  
the improvements, fixtures, and things belonging to  
the same : And also that he, the said lessee, his  
executors, administrators, and assigns, shall and will,  
at all times during the continuance of this demise,  
insure and keep insured the said messuage or dwell-  
ing-house, workshops, cottage, buildings, and pre-  
mises hereby demised, in some or one of the public  
insurance offices in London or Westminster, to be  
approved of by the said lessor, his heirs or assigns,  
in the joint names of the said lessor, his heirs or  
assigns, and of the said lessee, his executors, admi-  
nistrators, or assigns, in the sum of £                      at the

Covenant  
by lessee  
to insure.

least : And shall and will, whenever thereunto required, produce and show the policy or policies of such insurance, and the receipt or receipts for the premium or premiums to the said lessor, his heirs or assigns, as evidence of the same being kept on foot : And in case the said demised premises, or any part thereof, shall be burnt down, damaged, or destroyed by fire, shall and will forthwith lay out and expend the money to be recovered on any such insurance, and all further sums that may be required in rebuilding or reinstating the same : And also that it shall be lawful for the said lessor, his heirs and assigns, with or without workmen or others, at convenient times in the daytime, twice or oftener in every year during the continuance of the said term hereby granted, to enter and come into and upon the said messuage or dwelling-house, workshops, cottage, buildings, and premises, to view, search, and see the state and condition of the same, and of all defects, decays, and wants of reparation then and there found, to give or leave notice or warning in writing at the said demised premises to and for the said lessee, his executors, administrators, or assigns, to repair and amend the same within the space of                      calendar months thence next ensuing, within which space or time of                      calendar months after every or any such notice or warning in writing so to be given or left as aforesaid, he, the said lessee, his executors, administrators, or assigns, shall and will well and substantially repair and amend the same accordingly : And also that he, the said lessee, his executors, administrators, or assigns, shall not, nor will at any time or times hereafter, during the continuance of the said term hereby granted, carry on, or permit, or suffer to be carried

PRECEDENT 20.

LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

Liberty for  
lessor to  
enter and  
view state  
of repair.

Covenant  
by lessee  
not to  
carry on  
offensive  
trades,

**PRECE-  
DENT 20.****LEASE OF  
HOUSE AND  
WORK-  
SHOPS.**

on, in or upon the said demised premises, or any part thereof, the trades or businesses (a) of a carpenter, smith, slaughterer, horse-boiler, cart-grease or varnish maker, brass-founder, melter of tallow, soap-maker, tobacco-pipe-maker or burner, sugar-baker, fellmonger, dyer, distiller, common brewer, copper-smith, working-brazier, pewterer, tin-plate worker, tripe-boiler, gold-beater, beater of flax, hemp, or feathers, bone-boiler, cork-burner, depositor of night soil, compounder or de-compounder of any substances emitting gas, cow-keeper, or any other noisome or obnoxious or offensive art, trade, or business whatsoever, without the license and consent in writing of the said lessor, his heirs or assigns, for that purpose first had and obtained, nor without the like license and consent, use or exercise, or suffer to be used or exercised, any license in or upon the said demised premises, or any part thereof, for the sale of wines, beer, or spirits by retail: And further shall not, nor will, during the said term hereby granted, without the like license or consent, make any alteration or addition to the said demised premises, nor occupy the same, or any part thereof, nor suffer the same to be occupied in any manner which may be deemed a nuisance or annoyance to the tenants or occupiers of the adjoining premises, nor make or allow any encroachment to be made on the said demised premises; nor commit or suffer to be committed any waste, spoil or destruction of or to the same: And further, shall not nor will at any time during the said term hereby granted, without the like

nor assign  
or underlet  
premises.

Covenants  
not to carry  
on trades.

(a) In preparing covenants, not to carry on trades or businesses, care must be taken to express accurately whether the restraint is to extend to trades or businesses generally, or to particular trades or businesses only. (5 Dav. Conv. 139 n.)



previous license and consent, assign, underlet, or part with the possession of the said premises hereby demised, or any part thereof. Provided always, that if it shall happen that the said yearly rent of £ , or any part thereof, shall be behind or unpaid by the space of        days next over or after any of the said days whereon the same is hereinbefore made payable (whether lawfully demanded or not), or if the said lessee, his executors, administrators, or assigns, shall not well and truly observe, perform, fulfil, and keep all and every the covenants, clauses, conditions, and agreements hereinbefore contained, which on his and their part are and ought to be paid and performed according to the true intent and meaning of these presents, then and in either of the said cases it shall be lawful for the said lessor, his heirs or assigns, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy as in his and their first and former estate; and the said lessee, his executors, administrators, and assigns, and all other occupiers thereof, thereout and from thence utterly to expel, put out, and amove, this indenture, or anything herein contained to the contrary thereof, in anywise notwithstanding. And the said lessor, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said lessee, his executors, administrators, and assigns, that he, the said lessee, his executors, administrators, and assigns, paying the said yearly rent of £        on the days and times and in manner aforesaid, and observing, performing, fulfilling, and keeping all and every the covenants, clauses, conditions, and agreements herein contained, on his and their part to be observed, performed,

PRECE-  
DENT 20.

LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

Proviso for  
re-entry.

Covenant  
for quiet  
enjoyment.

PRECE-  
DENT 20.

LEASE OF  
HOUSE AND  
WORK-  
SHOPS.

fulfilled, and kept, shall and lawfully may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said messuage or dwelling-house and premises hereby demised, with the appurtenances, for and during the said term hereby granted, without any lawful let, suit, trouble, denial, eviction, molestation, or interruption of or by the said lessor, his heirs or assigns, or of or by any other person or persons whomsoever, claiming under him or them. In witness, &c.

## 21.

*Lease of Messuage and Premises in London to be  
used as a Public-house.*

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

Parties.

Testatum.

Parcels.

Haben-  
dum.

This Indenture made &c. between  
of &c. (hereinafter referred to as 'the said lessor')  
of the one part and of &c. (hereinafter  
referred to as 'the said lessee') of the other part:  
Witnesseth that in consideration of the yearly rent,  
covenants, provisoes, and conditions hereinafter re-  
served and contained, and on the part of the said  
lessee, his executors, administrators, and assigns, to  
be paid, observed, and performed, He, the said lessor,  
Doth by these presents demise and lease unto the said  
lessee, his executors, administrators, and assigns, All  
(*parcels*), Together with all ways, passages, yards,  
areas, cellars, vaults, easements, drains, watercourses  
lights, privileges, advantages, and appurtenances  
whatsoever, to the said messuage or tenement and  
premises belonging or in any wise appertaining. To  
have and To hold the said messuage or tenement and  
premises hereby demised, or intended so to be, with  
the appurtenances, unto the said lessee, his executors,  
administrators, and assigns, from the day of

during the term of            years from  
thence next ensuing, Yielding and paying for the  
same yearly, and every year during the said term,  
unto the said lessor, his heirs and assigns, the clear  
yearly rent or sum of £            sterling, to be paid by  
equal quarterly payments on the            day of            ,  
the            day of            , the            day of            , and  
the            day of            , in each and every year, the  
first quarterly payment of the said rent to be made  
on the            day of            , such rent to be paid  
free and clear of and from the land-tax, sewers-rate,  
and all other taxes, rents, assessments, deductions  
or abatements whatsoever, whether parliamentary,  
parochial, or otherwise, now or at any time hereafter  
to be imposed upon or payable in respect of the said  
messuage or tenement and premises, or any part  
thereof. And the said lessee doth hereby for himself,  
his heirs, executors, administrators, and assigns,  
covenant with the said lessor, his heirs and as-  
signs, in manner following (that is to say): That  
he, the said lessee, his heirs, executors, adminis-  
trators, or assigns, shall and will, from time  
to time, and at all times during the continuance  
of the said term hereby granted, truly pay or  
cause to be paid unto the said lessor, his heirs  
or assigns, the said yearly rent of £            ster-  
ling upon the days and times and in manner  
hereinbefore appointed for payment thereof: And  
also that he, the said lessee, his executors, ad-  
ministrators, or assigns, shall and will, from time  
to time, and at all times hereafter during the said  
term, truly pay or cause to be paid, satisfy, and dis-  
charge the land-tax, sewers-rate, and all and all  
manner of taxes, rates, duties, assessments, and im-

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.  
Redden-  
dum.

Covenants  
by lessee.

To pay  
rent.

To pay  
rates and  
taxes.

PRECE-  
DENT 21.

---

LEASE OF  
PUBLIC-  
HOUSE.  
To fit up  
premises as  
public-  
house.

sitions whatsoever, whether parliamentary, parochial, or otherwise, which now or at any time hereafter during the said term are or may be payable for or in respect of the said messuage or tenement and premises, or of the yearly rent hereby reserved (the landlord's property-tax only excepted): And also that he, the said lessee, his executors, administrators, or assigns, shall and will by or before the       day of       next, make and complete such alterations, additions, and repairs to, in and about the said messuage or tenement and premises hereby demised, or intended so to be, as shall be requisite and necessary to convert the said premises into a beer-shop or public-house, and shall and will, within such period as aforesaid, fit up and complete the same premises with all necessary fittings, fixtures, and utensils, which are requisite to be used in a public-house, or usually appertain thereto, so as to render the same commodious and convenient for the resort of customers, and shall and will lay out and expend a sum of money not less than the sum of £       in and about such alterations in and additions to the said premises, and in and about the fitting-up the same as a public-house, and shall and will make and complete such alterations, additions, and fittings in, to and about the said demised premises to the satisfaction in writing of the surveyor of the said lessor, his heirs, or assigns: And also, that he, the said lessee, his executors, administrators, or assigns, shall and will use his and their best endeavours to obtain a spirit licence or spirit licences for the said demised premises and shall not nor will do any act or thing to endanger the licence or licences in respect of the said premises when so obtained, and shall and will carry on and conduct the business of a publican upon the said

To en-  
deavour to  
obtain  
spirit  
licence.

premises in an orderly and proper manner : And also that he, the said lessee, his executors, administrators, or assigns, shall not nor will use or occupy, or carry on, in or upon the said demised premises, any trade or business, trades or businesses, other than and except that of a beer-shop, public-house, tavern, or licensed victualler : And also that he, the said lessee, his executors, administrators, or assigns, shall not nor will assign, underlet, or dispose of this present lease, or of the said demised premises, or any part thereof (except by way of mortgage), without the consent in writing of the said lessor, his heirs, or assigns, for that purpose first had and obtained : And also, that he, the said lessee, his executors, administrators, or assigns, shall and will, from time to time, and at all times hereafter during the continuance of the said term hereby granted, at his and their own proper expense and costs, when, where, and as often as occasion shall be or require, well and substantially repair, amend, uphold, support, sustain, maintain, slate, tile, lead, pave, glaze, paint, paper, whitewash, colour, scour, cleanse, empty, and keep in thorough repair, all and every part of the said messuage or tenement and premises hereby demised, together with the glass and other windows, window frames, window shutters, doors, locks, keys, bolts, bars, fastenings, bells, wainscots, partitions, ceilings, floors, hearths, chimney-pieces, chimney-jambs, tilings, pavements, privies, sinks, drains, cesspools, cisterns, pumps, wells, pipes, and watercourses thereunto belonging : And also all fixtures, buildings, improvements, and additions whatsoever, as at any time during the said term shall be erected, or made by him, the said lessee, his executors, administrators, or assigns, in or

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

Not to  
carry on  
any other  
trade.

Not to  
assign or  
underlet.

To repair.

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

To paint.

upon the said premises or any part thereof: And also bear, pay, and discharge a reasonable share of the charges and expenses of working, supporting, repairing and amending all party-walls and gutters, which now or at any time during the said term shall belong to the said premises or any part thereof: And moreover, that he, the said lessee, his executors, administrators, or assigns, shall and will once in every three years of the said term hereby granted, paint or cause to be painted in a good and workmanlike manner, all the external wood and ironwork, and such other external parts of the said messuage or tenement and premises as have been usually painted, twice with good and suitable oil colours: And also, shall and will once in every seven years of the said term hereby granted, paint, or cause to be painted, in like manner all the internal wood and ironwork, and such other parts of the interior of the said messuage or tenement and premises as have been usually painted, twice with like good oil colours: And the said messuage or tenement and premises with the appurtenances, so being in all things well and substantially repaired, amended, upheld, supported, sustained, maintained, slated, tiled, leaded, paved, glazed, painted, papered, whitewashed, coloured, scoured, cleansed, and kept as aforesaid, at the end or sooner determination of the said term, together with all doors, locks, keys, latches, bolts, bars, staples, hinges, wainscots, partitions, hearths, marble and other chimney-pieces, chimney-jambs, footpaces, slabs, covings, windows, easements, window-shutters, stoves, cupboards, dressers, shelves, cisterns, waterpipes, bells, posts, poles, rails, and all other fixtures, additions, and improvements whatsoever, which now are or which

at any time or times during the said term shall be fixed, fastened, or belong to, or used with the said demised premises or any part thereof, and also any licence or licences thereto belonging, he, the said lessee, his executors, administrators, or assigns, shall and will peaceably and quietly leave, deliver, and yield up to the said lessor, his heirs, or assigns: And further that he, the said lessee, his executors, administrators, or assigns, shall and will, immediately on the execution hereof, and at all times hereafter during the said term, at his and their own costs and charges, insure and keep insured in the joint names of the said lessor, his heirs and assigns, and of him, the said lessee, his executors, administrators, or assigns, the said messuage or tenement and buildings hereby demised, against loss or damage by fire in the sum of £ at the least, in the

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

To deliver  
up posses-  
sion.

To insure.

Fire Insur-  
ance Office, or in such other of the fire offices in the cities of London or Westminster, as the said lessor, his heirs, or assigns, shall from time to time by notice in writing direct or appoint: And whenever thereunto required by the said lessor, his heirs or assigns, shall and will produce and show forth to him or them the policy of insurance and the receipt for the payment of the current year's premium thereon: And in case the said messuage or tenement and buildings, or any of them, or any part thereof, shall at any time during the said term be destroyed or damaged by fire, and as often as the same shall happen, all such sums of money as shall be recovered or received by virtue of such insurance shall be immediately laid out in rebuilding such messuage or tenement and buildings, or reinstating such part or parts thereof as shall be destroyed or damaged by

PRECE-  
DENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

Power for  
lessor to  
enter to  
view state  
of repair.

Proviso for  
re-entry.

fire, as aforesaid, to the approbation of the surveyor of the said lessor, his heirs or assigns: And in case the moneys to be received by virtue of any such insurance shall not be sufficient to rebuild or restate such part or parts of the said messuage or tenement and buildings as shall be burnt, destroyed, or damaged, as aforesaid, then and in such case the said lessee, his heirs, executors, administrators, or assigns, shall and will out of his and their own proper moneys make good any deficiency therein. Provided always, and it is hereby declared and agreed, that it shall be lawful for the said lessor, his heirs or assigns, and his and their agent or agents, with or without surveyors, workmen or others, twice or oftener in every year during the continuance of this demise, at seasonable hours in the daytime, to enter into and upon the said messuage or tenement and premises or any part thereof, to view, search, and see whether the same be repaired, upheld, and kept, as aforesaid, and of all defects or wants of reparation which upon any such view or views shall be then and there found, to leave notice in writing on the said demised premises, for the said lessee, his executors, administrators, or assigns to repair and amend the same, and that he the said lessee, his executors, administrators, or assigns, shall and will, within calendar months next, after every such notice shall be so left as aforesaid, well and sufficiently repair and amend the same accordingly. Provided always, and these presents are upon this express condition, nevertheless, that if the said yearly rent of £ , hereby reserved, shall be in arrear and unpaid for days next after any or either of the days or times hereinbefore appointed for payment thereof, being first lawfully demanded upon or at any



time after either of the said days, and not paid when demanded, or if the said lessee, his executors, administrators, or assigns, shall not well and truly observe, perform, and keep all and every the covenants and conditions hereinbefore contained, and on his and their part to be performed and kept according to the true intent and meaning of these presents, then and from thenceforth, and in either of the said cases, the covenant for quiet enjoyment hereinafter contained shall wholly cease and be void, and the said lessor, his heirs, or assigns, shall and lawfully may, immediately upon or at any time or times after such breach or non-performance, enter into and upon the premises hereby demised, or any part thereof, in the name of the whole, and repossess, retain, and enjoy the same, as of his or their former estate or interest, and as if these presents had not been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators and assigns, that he and they, paying the said yearly rent at the times and in manner hereinbefore mentioned for payment thereof, and observing and performing the covenants, stipulations, and conditions herein contained, on his and their part to be paid, observed, and performed, may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said messuage or tenement and premises hereby demised during the said term hereby granted, without any let, suit, eviction, ejection, interruption, molestation, or disturbance, of or by the said lessor, his heirs or assigns, or any other person or persons whomsoever, lawfully claiming under, or in trust for him or them. In witness, &c.

PRECEDENT 21.

LEASE OF  
PUBLIC-  
HOUSE.

Covenant  
for quiet  
enjoyment.

## 22.

*Mortgage of Freehold Property. (a)*PRECE-  
DENT 22.MORTGAGE  
OF FREE-  
HOLDS.

Parties.

Recitals—  
title.Applica-  
tion for  
loan.First tes-  
tatum.Covenant  
for pay-  
ment.Second tes-  
tatum.Convey-  
ance.

Parcels.

Haben-  
dum.Difference  
in mort-  
gage to  
secure  
trust-  
moneys.Delivery of  
deeds by  
mortgagor.

This Indenture, made &c., between A.B., of &c., of the one part, and C.D., of &c., of the other part. Whereas (*recite conveyance of property to A.B., the mortgagor*). And whereas the said C.D. has, on the application of the said A.B., agreed to advance unto him the sum of £        upon having the same, with interest thereon, secured in manner hereinafter contained. Now this Indenture witnesseth (*covenant for payment of principal money and interest*). And this Indenture further witnesseth that in further pursuance of the said recited agreement in such behalf, and for the considerations aforesaid, He the said A.B. Doth by these presents grant and convey unto the said C.D., his heirs and assigns, All (*parcels, general words for farms and the estate clause*). To Have and To Hold the said        and premises hereby assured,

(a) The only difference in a mortgage to secure trust-moneys is, that a declaration is inserted that the money belongs to them jointly on a joint account, and that the receipt of the survivor shall be a good discharge. In other respects the security is framed in the same manner as if made to the lenders for their own benefit, for the trusts should not appear on the face of the deed, and any declaration of trust in favour of the persons beneficially interested should be contained in a separate instrument, the expense of which the mortgagor, without a special agreement to such effect, will not be bound to pay. (*Ex parte Martin*, 2 Moo. & P. 240. 5 Byth. & Jarm. 578 n.)

It would seem that formerly a schedule of the deeds to be delivered by the mortgagor to the mortgagee was made out, and an acknowledgment of receipt given. (1 Byth. & Jarm. 259). But we believe that the present practice is to deliver over the deeds without any such formality.

or intended so to be, unto and to the use of the said C.D., his heirs and assigns, for ever, subject nevertheless to the proviso for redemption, and with and under the powers and provisions hereinafter contained. (*Proviso for redemption, power of sale, and covenants for title*). In witness, &c.

PRECEDENT 22.

MORTGAGE OF FREEHOLDS.

Proviso for redemption and power of sale.

### 23.

#### *Mortgage of Leasehold Property. (a)*

This Indenture, made &c., between A.B., of &c., of the one part, and C.D., of &c., of the other part. (*Recite lease and mesne assignments*). And whereas

PRECEDENT 23.  
MORTGAGE OF LEASEHOLDS.

Parties.  
Recitals—  
title.

Of application for loan.

Mortgages of leaseholds.

Where should be made by assignment.

And where by underlease.

(a) In mortgages of leaseholds it must be considered whether it should be by underlease or assignment. A mortgagee who takes an assignment of a lease becomes liable to the rent and covenants thereof, though he never take possession (*Williams v. Bosanquet*, 1 Brod. & Bing. 238), and for the breach of a covenant incurred in his own time, though the action be not commenced until after he has assigned the premises. (*Harley v. King*, 2 Cr. M. & R. 18). If the rent be trifling and the covenants not burdensome, the mortgage should be made by assignment, because it is more desirable that the mortgagee should have the whole legal interest rather than a mere derivative estate. Where, however, the rent is large, or the covenants raise liabilities, then the mortgage should be by underlease. (2 Dav. Conv. 669). The mortgagee will not then be liable to the superior landlord in respect of the rent or covenants of the original lease. (*Holford v. Hatch*, 1 Doug. 183; *Earl of Derby v. Taylor*, 1 East, 502). It should be borne in mind, however, that as there is no privity either of estate or contract between the original lessor and an underlessee, a mortgagee loses by an underlease the benefit of the covenants in the lease. (2 Crabb Conv. 944). The practice in mortgages of leaseholds is to reserve a day or other small portion of the term, which, by rendering the mortgagee an underlessee, prevents that privity of estate which by an assignment of the whole term would arise between him and the original lessor, and from which privity the mortgagee's liability arises. (5 Bart. Pr. 320 n.)

Practice of reserving a day of the term.

**PRECE-  
DENT 23.**  
**MORTGAGE  
OF LEASE-  
HOLDS.**

the said A.B. has, on the application of the said C.D., agreed to advance unto him the sum of £        on the terms that such principal sum and interest thereon shall be secured in manner hereinafter contained. Now this Indenture witnesseth (*covenant for payment of principal money and interest*). And this Indenture further witnesseth that in further pursuance of the said agreement, and for the considerations aforesaid, He the said A.B. Doth by these presents grant and demise unto the said C.D., his executors, administrators, and assigns, All and singular the (*short description of parcels*) which were comprised in, or demised by, or are held under or by virtue of, or subject to the hereinbefore recited indenture of lease, and their respective rights, members, and appurtenances. To Have and To Hold the said        and premises hereby demised, or intended so to be, unto the said C.D., his executors, administrators, and assigns, henceforth during all the now residue (except the last day) of the said term of years granted by the hereinbefore recited indenture of lease: Nevertheless subject to the proviso for redemption, and with and under the powers and provisions hereinafter contained; (that is to say) (*Proviso for redemption, power of sale, and covenants for title*). In witness, &c.

**First tes-  
tatum.**  
**Covenant  
for pay-  
ment.**  
**Second tes-  
tatum.**  
**Assign-  
ment.**

**Parcels.**

**Habon-  
dum.**

**Proviso for  
redemp-  
tion and  
power of  
sale.**

## 24.

**PRECE-  
DENT 24.**  
**MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.**

*Mortgage of Freehold Premises Situate at*  
*in the County of        for securing £*  
*and Interest—A very Short Form.*

**Parties.**

This Indenture, made &c., between  
of &c. (hereinafter called 'the said mortgagor'), of

the one part, and \_\_\_\_\_, of &c. (hereinafter called 'the said mortgagee'), of the other part. Whereas by Indenture, dated the \_\_\_\_\_ day of \_\_\_\_\_, and made between \_\_\_\_\_, of the one part, and the said mortgagor of the other part, the lands, messuages, and hereditaments hereinafter described, and hereby mortgaged, were conveyed unto the said mortgagor, his heirs and assigns for ever. And whereas the said mortgagor has requested the said mortgagee to advance unto him the sum of £ \_\_\_\_\_ upon having the repayment thereof with interest secured in manner hereinafter appearing. Now this Indenture witnesseth that, in consideration of the sum of £ \_\_\_\_\_ sterling to the said mortgagor, now paid by the said mortgagee, the receipt whereof the said mortgagor hereby acknowledges and therefrom releases the said mortgagee, his heirs, executors, and administrators, The said mortgagor hereby for himself, his heirs, executors and administrators, covenants with the said mortgagee, his executors and administrators, that the said mortgagor, his heirs, executors, or administrators, will pay unto the said mortgagee, his executors or administrators, the sum of £ \_\_\_\_\_ sterling on the \_\_\_\_\_ day \_\_\_\_\_ next, together with interest thereon in the meantime or during the continuance of this security, at the rate of £ \_\_\_\_\_ per cent. per annum, by equal half-yearly payments, on the \_\_\_\_\_ day of \_\_\_\_\_ and the day of \_\_\_\_\_ in every year, and without deduction. And this Indenture further witnesseth that for the consideration aforesaid the said mortgagor Doth by these presents grant and convey unto the said mortgagee and his heirs, All (*parcels*), And all outhouses, buildings, yards, gardens, ways, waters, water-

PRECEDENT 24.

MORTGAGE OF FREEHOLDS—SHORT FORM.

Recite conveyance to mortgagor.

Recite application for loan.

First testamentum. Covenant to pay principal money and interest.

Second testamentum. Conveyance.

Parcels. General words.

PRECE-  
DENT 24.

MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.  
Estate  
clause.  
Haben-  
dum.  
Proviso  
for re-  
demption.

courses, easements, and appurtenances to the said pre-  
mises belonging. And all the estate and interest of  
the said mortgagor therein or thereto. To have and To  
hold the said premises hereby mortgaged unto and  
to the use of the said mortgagee, his heirs and assigns,  
subject to the proviso for redemption and the  
powers hereinafter contained (that is to say): Pro-  
vided always that if the said mortgagor, his heirs,  
executors, administrators, or assigns, shall on the

day of next pay unto the said mort-  
gagee, his executors, administrators, or assigns the  
sum of £ sterling, and interest for the same  
after the rate of £ per cent. per annum in the  
meantime or during the continuance of this security,  
by equal half-yearly payments, on the day of  
and the day of in every year,

then the said mortgagee, his heirs or assigns, shall  
reconvey the said premises hereby mortgaged unto  
the said mortgagor, his heirs or assigns. Provided  
also that in case default shall be made in payment of  
the said sum of £ , or the interest thereof, for

calendar months after any of the days here-  
inbefore appointed for payment of the same respec-  
tively, then it shall be lawful for the said mortgagee,  
his heirs or assigns, thereupon or any time thereafter,  
to enter into possession of the said premises, or into  
the receipt of the rents and profits thereof, and either  
before or after such possession or receipt, and without  
any further consent on the part of the said mort-  
gagor, his heirs or assigns, absolutely to sell the said  
premises hereby mortgaged, or any part of the same,  
either together or in parcels, at one or more time or  
times, and either by public auction or private con-  
tract, or partly by each such mode, and subject to

Power to  
enter into  
possession  
and sell.

such special or other conditions, and for such price or prices as shall seem advisable, and to enter into such contracts and execute all such conveyances as he or they shall think proper, with liberty to buy in the said premises, or any part thereof, at any auction, and to resell the same at any future auction or by private contract, with all the original powers and discretions, without being responsible for any loss or diminution in price consequent thereupon, and also to rescind or vary the terms of any contract for sale which shall have been entered into, and assure the said premises when sold unto the purchaser or purchasers thereof, or as he or they shall direct. And it is hereby declared that the said mortgagee, his heirs, executors, administrators, and assigns, shall stand possessed of the money arising from such sale or sales, and the rents and profits of the said premises (if any) which shall have been received by him or them upon trust, to retain thereout all expenses incidental to any such sale or sales, or otherwise in relation thereto, or the receipt of such rents and profits, or which shall have been incurred in obtaining possession of or enforcing any contract or contracts for sale of the said premises, and all other expenses arising or incurred by legal proceedings or otherwise in execution of the powers and trusts hereinbefore contained, or occasioned by the non-performance or non-observance of any covenant herein contained; and, in the next place, to retain and satisfy unto himself and themselves the said principal sum of £        and all interest then due for the same, or so much respectively as shall then remain unpaid, and any sums which he or they may have paid for insurance from damage by fire, with interest at the rate

PRECEDENT 21.

MORTGAGE OF FREEHOLDS—SHORT FORM.

Declaration as to purchase-moneys.

PRECE-  
DENT 24.  
MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.

Indemnity  
to pur-  
chasers.

Notice of  
sale to be  
given.

aforesaid from the time of payment thereof respectively, and to pay the surplus of such moneys and rents (if any) unto the said mortgagor, his heirs, executors, administrators, or assigns. And it is hereby further declared that every receipt of the said mortgagee, his heirs, executors, administrators, or assigns, shall be an effectual discharge to the purchaser or respective purchasers, or other persons paying any moneys in pursuance of these presents for all moneys therein respectively acknowledged to be received, and that the purchaser or purchasers or other persons taking any such receipt shall not afterwards be required to see to the application thereof, nor be answerable or accountable for the misapplication or non-application of the moneys therein acknowledged to be received, and that such purchaser or purchasers taking such receipt shall not afterwards be required or concerned to enquire whether such default has been made, or whether such notice has been given as herein required, or into any other matter or thing connected with the propriety or regularity of any sale, or be affected by express notice that no such default has been made or notice given, or that such sale or sales is or are irregular or improper. Provided always (but so as not to affect any purchaser, although he may have express knowledge that no such notice as next mentioned has been given), and it is hereby declared that no sale, or notice of such sale, of any of the said premises shall be made or given by the said mortgagee, his heirs, executors, administrators, or assigns, before and until he or they shall have given to the said mortgagor, his heirs, executors, administrators, or assigns, or have left at his or their last or most usual



abode in England,                      calendar months' notice in writing demanding payment of the principal money and interest due on this security, and the said mortgagor, his heirs, executors, administrators, or assigns, shall have made default in payment of the same at the end of such                      calendar months' notice. Provided always and it is hereby declared that at any time after the                      day of                      next, and whether or not any interest on the said sum of £                      or any part thereof shall have become payable, and whether or not any interest on the said sum, or any part thereof, shall have been in arrear for the space of                      calendar months, and whether or not any omission shall have been made to pay any premium on any such insurance as hereinafter mentioned, the power to appoint or obtain the appointment of a receiver of the rents and profits of the said premises hereby mortgaged, or any part thereof, given by the 11th section of the Act of the 23rd and 24th Vict., cap. 145, and all the subsequent sections in the said Act relative to a receiver may be exercisable, but no other of the powers or incidents conferred or annexed by the said Act shall take effect or be exercisable. And the said mortgagor, for himself, his heirs, executors, and administrators, hereby covenants with the said mortgagee, his executors, administrators, and assigns, that the said mortgagor now has good right to convey the said premises hereby mortgaged unto the said mortgagee, his heirs and assigns, as aforesaid: And that after default in payment of the moneys hereby secured it shall be lawful for the said mortgagee, his heirs and assigns, thenceforth peaceably to enter upon and enjoy the said premises without any interruption from the said mortgagor

PRECEDENT 24.

MORTGAGE OF FREEHOLDS—SHORT FORM.

Powers as to receiver under Trustees and Mortgagees Act to apply.

Covenants for title.

Good right to convey.

Quiet enjoyment.

PRECE-  
DENT 21.  
  
MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.  
  
Freedom  
from in-  
cum-  
brances.  
Further  
assurance.

or any other person, and free and clear from all estates and incumbrances, and also that the said mortgagor and his heirs, and every person lawfully claiming any estate or interest in or out of the said premises hereby mortgaged, will at any time hereafter, at any reasonable request of the said mortgagee, his heirs or assigns, but at the costs of the said mortgagor, his heirs or assigns, until the said premises shall be sold, and thenceforth at the costs of the person requiring the same, make and execute every such lawful act, deed, and assurance for more effectually assuring the said premises unto the said mortgagee, his heirs and assigns, or as he or they, or his or their counsel in the law shall advise or require.

To repair.

And also that the said mortgagor, his heirs, executors, or administrators, will keep the said messuages and buildings hereby mortgaged in good and substantial repair. And, lastly, that the said mortgagor, his heirs, executors, administrators, or assigns, will, at his or their own costs during the continuance of this security, insure from damage by fire in some respectable office for insurance all the buildings erected on the said land in the sum of £        at the least, and produce the receipts for the premiums upon such insurance, and, in default thereof, it shall be lawful for (but not incumbent on) the said mortgagee, his heirs, executors, administrators, or assigns to effect and keep on foot such insurance or insurances, and that the said mortgagor, his heirs, executors, administrators, or assigns, will at the expiration of        days from the time of such payment pay

To insure.

unto him or them such sum of money as he or they shall pay in or about such insurance, with interest thereon after the rate aforesaid, and such sum and

**PRECE-  
DENT 24.**

---

**MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.**

25. *Her*  
£

*Surrender of Copyhold Hereditaments in Manor of*  
*, to secure £      and Interest.*

The manor of      , } Be it remembered that on  
in the county of      } the      day of      , 18  
of (*mortgagor*), one of the copyhold tenants of  
the said manor, came before me,      steward of  
the said manor, and in consideration of the sum  
of £      sterling to the said (*mortgagor*), then paid  
by the said (*mortgagee*), did out of Court surrender  
into the hands of the lord of the said manor All  
&c. (*parcels*). And all the estate, &c. to the use  
of the said (*mortgagee*), his heirs and assigns, as  
the will of the lord, and according to the custom of  
the said manor: Nevertheless, upon trust that if the  
said (*mortgagor*), his heirs, executors, administrators  
or assigns, do and shall pay or cause to be paid unto  
the said (*mortgagee*), his executors, administrators, or  
assigns, the sum of £      sterling upon the      day  
of      , and in the meantime or during the

**PRECEDENT 25.**  
**SURRENDER OF COPYHOLDS ON MORTGAGE.**

**Surrender out of court.**  
**Parcels.**

**To use of mortgagee.**

**Subject to redemption.**

PRECE-  
DENT 26.  
  
SURRENDER OF  
COPY-  
HOLDS ON  
MORTGAGE.

Power of  
sale by  
reference.

continuance of this security, do half-yearly, on the  
day of                      and the                      day of  
in every year, pay or cause to be paid  
unto the said (*mortgagee*), his executors, administra-  
tors, or assigns, interest for the said sum of £  
after the rate of £                      per cent. per annum,  
and make all such payments without any deduction  
whatsoever (save and except in respect of the income  
or property tax), then the said (*mortgagee*), his heirs  
or assigns, shall and will surrender the said premises  
unto the said (*mortgagor*), his heirs and assigns; but  
in case default shall be made in payment of the said  
principal sum of £                      , or any part thereof, or the  
interest of the same or any part thereof, for  
calendar months after either of the days so appointed  
for payment of the same respectively (and although  
any prior default in payment of interest shall have  
been waived), then the said (*mortgagee*), his heirs  
or assigns, shall stand seised of the said copyhold  
hereditaments upon and with the same trusts for or  
powers of sale of the same premises as by an inden-  
ture of mortgage bearing even date with and executed  
at the time of this surrender, and made between the  
said (*mortgagor*) of the one part, and the said (*mort-  
gagee*) of the other part, were in such events given or  
limited to the said (*mortgagee*), his heirs and assigns,  
over the freehold hereditaments thereby assured: And  
so that the said (*mortgagee*), his heirs, executors,  
administrators, and assigns, may have and exercise all  
the powers and authorities of giving discharges for  
purchase moneys and for the application of the same  
as by that Indenture are given to the said (*mortgagee*),  
his heirs, executors, administrators, and assigns.

Taken and accepted before me  
Steward.

A. B.,

## 26.

*Deed conferring Power of Sale and containing Covenants on Mortgage of Copyhold Property (a).*

This Indenture, made &c., between A. B., of &c., (mortgagor), of the one part, and C. D., of &c., (mortgagee), of the other part. Whereas, on the day of the said A. B. (mortgagor) was duly admitted tenant to All (*short description of parcels*), To hold at the will of the lord, according to the custom of the said manor, and by and under the rents, suits, and services therefore due and of right accustomed. And whereas the said C. D. has, on the application of the said A. B., agreed to advance him the sum of £ upon the terms that the same should be secured by means of a mortgage of the said copyhold and hereditaments. And whereas, in pursuance and part performance of the said recited agreement, the said A. B. has on the day of the date, and immediately before the execution of these presents out of court, surrendered the said copyhold and hereditaments to the use of the said C. D., his heirs and assigns, at the will of the lord, according to the custom of the said manor, subject to a proviso or condition for redemption on payment of the said sum of £, and interest thereon, similar to the covenant for payment herein-

PRECEDENT 26.

DEED OF COVENANTS AND POWER OF SALE OF COPYHOLDS.

Parties. Recitals — of admittance of mortgagor. Of application for loan.

Of surrender of even date.

(a) No covenants or power of sale can be inserted on the court-rolls, and therefore it has become usual in the case of a mortgage to have a separate deed of covenants with a power of sale; but where the property is of small value, the entry of the title on the court-rolls is generally considered to afford a purchaser such security as to enable him to dispense with a deed of covenants. (Sweet's Pr. 178 n., ed. 2).

Covenants and power of sale in case of copyholds.

PRECE-  
DENT 26.

DEED OF  
COVEN-  
ANTS AND  
POWER OF  
SALE OF  
COPY-  
HOLDS.

Testatum.

Covenant  
for pay-  
ment and  
power of  
sale.

after contained. Now this Indenture witnesseth that in pursuance and further performance of the said recited agreement in such behalf (*covenant for payment of mortgage money and interest, power of sale, and subsidiary trusts and covenants for title*). In Witness, &c.

27.

*Mortgage of Furniture, Farming Stock and Effects, for Securing £                      and Interest at £ per cent. per annum.*

PRECE-  
DENT 27.

MORTGAGE  
OF FURNI-  
TURE AND  
FARMING  
STOCK.

Parties.

Recitals—  
of tenancy.

Of agree-  
ment for  
loan.

First tes-  
tatum.

This Indenture, made, &c. between  
of                      (*mortgagor*) of the one part, and  
of                      (*mortgagee*) of the other part. Whereas  
the said (*mortgagor*) is tenant from year to year of  
the farm called                      , situate at                      ,  
and holden under                      (*landlord*), and in right  
of such tenancy is entitled to, or can claim divers  
tenant rights and following or way-going crops, and  
the said (*mortgagor*) is possessed of household furni-  
ture, live and dead farming stock and effects in or  
upon the said farm and premises. And whereas the  
said (*mortgagee*) has agreed to lend unto the said  
(*mortgagor*) the sum of £                      sterling, upon having  
the same with interest thereon at £                      per cent. per  
annum secured in manner hereinafter expressed.  
Now this Indenture witnesseth that in performance  
of the said recited agreement, and in consideration of  
£                      sterling to the said (*mortgagor*) now paid by  
the said (*mortgagee*), the receipt whereof he the said  
(*mortgagor*) doth hereby acknowledge, and therefrom  
for ever release the said (*mortgagee*), his executors,  
administrators, and assigns, He the said (*mortgagor*)  
Doth, for himself, his heirs, executors, and adminis-

trators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he the said (*mortgagor*), his heirs, executors, or administrators, shall and will pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, the said principal sum of £                      sterling upon the day of                      , and also shall and will in the meantime, or during the continuance of the said sum upon this security, pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, interest for the said sum of £                      , after the rate of £                      per cent. per annum, by half-yearly payments, on the                      day of                      and the                      day of                      in every year, and shall and will make all such payments of principal money and interest without any deduction or abatement whatsoever. And this Indenture further witnesseth that in further pursuance of the said agreement, and for the considerations aforesaid, He the said (*mortgagor*) Doth by these presents grant, demise, and lease unto the said (*mortgagee*), his executors, administrators, and assigns, All that the said                      farm and premises at                      aforesaid, of which he the said (*mortgagor*) is so tenant from year to year under the said (*landlord*) and the appurtenances (*a*). To have and To hold the said                      farm and premises and their appurtenances unto the said (*mortgagee*), his executors, administrators, and assigns, henceforth from year to year during the tenancy

PRECE-  
DENT 27.

MORTGAGE  
OF FURNI-  
TURE AND  
FARMING  
STOCK.

Covenant  
to pay  
principal  
money and  
interest.

Second tes-  
tatum.  
Demise of  
farm.

Haben-  
dum.

(a) An assignment of future crops, apart from any estate in the land producing the same, will not bind creditors. In order that such crops may pass, an interest in the land should be granted, upon the principle that the crops may be taken as the result of ownership. (*Pike v. Eyre*, 9 B. & C. 909).

How future  
crops may  
be as-  
signed.

PRECE-  
DENT 27.

MORTGAGE  
OF FURNI-  
TURE AND  
FARMING  
STOCK.

At pepper-  
corn rent.

Third tes-  
tatum.

Assign-  
ment of  
furniture,  
stock, and  
crops.

Haben-  
dum.

Declara-  
tion of  
trusts.

of the said (*mortgagor*), but determinable by the said (*mortgagee*), his executors, administrators, or assigns, upon one day's notice; Yielding and paying therefor one peppercorn yearly on the 1st day of January in every year of this subdemise, nevertheless, upon the trusts and with the powers hereinafter expressed. And this Indenture further witnesseth that in pursuance and further performance of the said recited agreement, and for the consideration aforesaid, He the said (*mortgagor*) Doth by these presents bargain, sell, and assign unto the said (*mortgagee*), his executors, administrators, and assigns, All and singular the household furniture, farming, and live and dead stock, implements and husbandry utensils and effects of or belonging to the said (*mortgagor*) in or about the said farm and premises at : And also all seedlings now in or upon, and all the crops now growing and hereafter during the continuance of this subdemise or security to grow in and upon the said farm, and all the tenant rights following or way-growing crops to which the said (*mortgagor*), or his executors, administrators, or assigns, is are or would be entitled by reason or in respect of the said tenancy of the said (*mortgagor*) under the said (*landlord*). To have, hold and take the said household furniture, farming live and dead stock, implements, effects, crops, tenant rights, and premises hereby bargained and sold, or, lastly, otherwise assured, or intended so to be, unto and by the said (*mortgagee*), his executors, administrators, and assigns, absolutely, nevertheless upon the trusts and with the powers hereinafter contained. And it is hereby declared and agreed that the said subdemise, assignment, and assurance hereinbefore contained are so respectively made unto



the said (*mortgagee*), his executors, administrators, and assigns, upon the trusts, and subject to the provisoes, and with the powers hereinafter contained (that is to say), Upon trust that the said (*mortgagee*), his executors, administrators, and assigns, do and shall until default in payment of the said sum of £        or any part thereof, or the interest of the same or any part thereof, upon the said        day of        or until after notice in writing from the said (*mortgagee*), his executors, administrators, or assigns, unto the said (*mortgagor*), his heirs, executors, administrators, or assigns, requiring possession of the premises to be given unto the said (*mortgagor*), his executors, administrators, or assigns, or to be left for him or them upon the said premises, permit and suffer the said (*mortgagor*), his executors, administrators, and assigns, to remain in possession of the said farm and premises, and hold and enjoy the said furniture, stock, effects, tenant rights, and premises, but in case default shall be made in payment of the said sum of £        sterling, or the interest thereof, or any part of the same, upon the        day of        next, then or at any subsequent time, as the said (*mortgagee*), his executors administrators, or assigns, shall think fit, Upon trust, that he or they, in his or their absolute and uncontrolled discretion, may enter into and upon the said premises, and take, reap, sever, and carry away, and sell the stock and crops thereon, or sell and dispose of such crops whilst uncut or unreaped upon the said premises, and give and grant powers to reap, sever, and carry away the same, and also sell and dispose of the said furniture and other effects, and all the benefit of such tenant rights and

PRECEDENT 27.

MORTGAGE OF FURNITURE AND FARMING STOCK.

To permit mortgagor to enjoy until default.

After default mortgagor may enter into possession and sell.

PRECE-  
DENT 24.

MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.

Estate  
clause.

Haben-  
dum.

Proviso  
for re-  
demption.

courses, easements, and appurtenances to the said pre-  
mises belonging. And all the estate and interest of  
the said mortgagor therein or thereto. To have and To  
hold the said premises hereby mortgaged unto and  
to the use of the said mortgagee, his heirs and assigns,  
subject to the proviso for redemption and the  
powers hereinafter contained (that is to say): Pro-  
vided always that if the said mortgagor, his heirs,  
executors, administrators, or assigns, shall on the

day of next pay unto the said mort-  
gagee, his executors, administrators, or assigns the  
sum of £ sterling, and interest for the same  
after the rate of £ per cent. per annum in the  
meantime or during the continuance of this security,  
by equal half-yearly payments, on the day of

and the day of in every year,  
then the said mortgagee, his heirs or assigns, shall  
reconvey the said premises hereby mortgaged unto  
the said mortgagor, his heirs or assigns. Provided  
also that in case default shall be made in payment of  
the said sum of £ , or the interest thereof, for

Power to  
enter into  
possession  
and sell.

calendar months after any of the days here-  
inbefore appointed for payment of the same respec-  
tively, then it shall be lawful for the said mortgagee,  
his heirs or assigns, thereupon or any time thereafter,  
to enter into possession of the said premises, or into  
the receipt of the rents and profits thereof, and either  
before or after such possession or receipt, and without  
any further consent on the part of the said mort-  
gagor, his heirs or assigns, absolutely to sell the said  
premises hereby mortgaged, or any part of the same,  
either together or in parcels, at one or more time or  
times, and either by public auction or private con-  
tract, or partly by each such mode, and subject to

such special or other conditions, and for such price or prices as shall seem advisable, and to enter into such contracts and execute all such conveyances as he or they shall think proper, with liberty to buy in the said premises, or any part thereof, at any auction, and to resell the same at any future auction or by private contract, with all the original powers and discretions, without being responsible for any loss or diminution in price consequent thereupon, and also to rescind or vary the terms of any contract for sale which shall have been entered into, and assure the said premises when sold unto the purchaser or purchasers thereof, or as he or they shall direct. And it is hereby declared that the said mortgagee, his heirs, executors, administrators, and assigns, shall stand possessed of the money arising from such sale or sales, and the rents and profits of the said premises (if any) which shall have been received by him or them upon trust, to retain thereout all expenses incidental to any such sale or sales, or otherwise in relation thereto, or the receipt of such rents and profits, or which shall have been incurred in obtaining possession of or enforcing any contract or contracts for sale of the said premises, and all other expenses arising or incurred by legal proceedings or otherwise in execution of the powers and trusts hereinbefore contained, or occasioned by the non-performance or non-observance of any covenant herein contained; and, in the next place, to retain and satisfy unto himself and themselves the said principal sum of £        and all interest then due for the same, or so much respectively as shall then remain unpaid, and any sums which he or they may have paid for insurance from damage by fire, with interest at the rate

PRECE-  
DENT 21.

MORTGAGE  
OF FREE-  
HOLDS—  
SHORT  
FORM.

Declara-  
tion as to  
purchase-  
moneys.

**PRECE-  
DENT 28.**

**MORTGAGE  
OF FURNI-  
TURE.**

of applica-  
tion for  
loan.

First tes-  
tatum.

Covenant  
for pay-  
ment.

Second tes-  
tatum.

Assign-  
ment of  
furniture.

Proviso for  
redemp-  
tion.

Quiet en-  
joyment  
until  
default.

gagee) has, on the application of the said A. B. (*mortagor*), agreed to advance unto him the sum of £ , upon having the same, with interest thereon, secured in manner hereinafter contained. Now this Indenture witnesseth, that, &c. (*Covenant for payment of mortgage money and interest*). And this Indenture further witnesseth, that, &c. (*Assignment of goods and furniture*). To have, hold, receive, and take the said goods, chattels, furniture, and effects hereby assigned, or intended so to be, unto and by the said C. D. (*mortgagee*), his executors, administrators, and assigns, nevertheless subject to the proviso for redemption hereinafter contained (that is to say), Provided always, and it is hereby declared and agreed, that if the said A. B. (*mortagor*), his heirs, executors, administrators, or assigns, do and shall immediately, on demand being made by notice in writing to that effect, to be delivered to him or left at his usual place of residence or abode, pay unto the said C. D. (*mortgagee*), his executors, administrators, or assigns, the sum of £ sterling, together with interest thereon at the rate of £ per cent. per annum, up to the time of such demand, then the said C. D. (*mortgagee*), his executors, administrators, or assigns, do and shall re-assign the said premises hereby mortgaged or intended so to be, unto the said A. B. (*mortagor*), his executors, administrators, or assigns; and also cause a memorandum of satisfaction of this mortgage to be written on these presents. Provided also, and it is hereby further declared and agreed, that until such default in payment of mortgage money or interest as aforesaid, it shall be lawful for the said A. B. (*mortagor*), his executors or administrators, to retain and hold quiet possession and enjoyment of the said premises

hereby assigned or intended so to be. Provided also, and it is hereby further declared and agreed, that immediately on such default in payment of principal money or interest as aforesaid, it shall be lawful for the said C. D. (*mortgagee*), his executors, administrators, or assigns, to enter into possession of the goods, chattels, furniture, and effects, hereby assigned or intended so to be, and sell the same, or any part or parts thereof, (a) either by public auction or private contract, and to give any receipt or receipts to the purchaser or purchasers of the same for the produce arising from any such sale. And it is hereby declared and agreed, that the said C. D. (*mortgagee*), his executors, administrators, or assigns, shall, from and out of the moneys to arise from any such sale or sales as aforesaid, in the first place pay and discharge the costs and expenses attendant upon such sale or sales, and in the next place retain and pay unto and for him the said C. D. (*mortgagee*), his executors, administrators, and assigns, the said sum of £ and interest, or so much thereof as may remain unpaid, and pay the surplus of the said moneys unto the said A. B. (*mortgagor*), his executors, administrators, or assigns. Provided also, and it is hereby further declared and agreed, that the said C. D. (*mortgagee*), his executors, administrators, or assigns, shall not be answerable or responsible, under or by means of the trusts or provisions of these presents, for any other moneys than he or they shall actually receive, nor for any losses which may arise to the said trust moneys, other than by or through his or

PRECE-  
DENT 28.

MORTGAGE  
OF FURNI-  
TURE.

On default  
mortgagee  
may enter  
into pos-  
session  
and sell.

Trusts of  
sale  
moneys.

Indemnity  
to mort-  
gagee.

(a) Personal property may be sold without any express provision for that purpose (*Tucker v. Wilson*, 1 P. Wms. 261; *Lockwood v. Ewer*, 2 Atk. 303); though it is usual either to confer a power of sale or have a declaration of trusts. Sale of personal property.

PRECE-  
DENT 28.  
MORTGAGE  
OF FURNI-  
TURE.  
Covenant  
not to  
remove  
furniture.

To insure.

Covenants  
for title.

Schedule.

Registra-  
tion of  
mortgage  
of fixtures.

their wilful act or default. And he, the said A. B. (*mortgagor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D. (*mortgagee*), his executors, administrators, and assigns, that he the said A. B., his executors, or administrators, shall not nor will remove or displace the said goods, chattels, furniture, and effects hereby assigned, or intended so to be, or any part thereof: And also that he or they shall and will duly insure the same for the sum of £ , and in case of his or their default so to do, it shall be lawful for the said C. D. (*mortgagee*), his executors, administrators, or assigns, to insure the said premises for the sum of £ , and to charge the said premises with the sums payable in respect of the premiums thereof: And also that he, the said A. B. (*mortgagor*), has good right to assign the said premises, and that the same shall be quietly enjoyed by the said C. D. (*mortgagee*), his executors, administrators, and assigns, in manner aforesaid; and that the same are free from any charge, mortgage, or other incumbrance: And that he, the said A. B. (*mortgagor*), his executors, or administrators, will do any further or other act, matter, or thing for better assigning the said premises unto the said C. D. (*mortgagee*), his executors, administrators, and assigns, subject to such equity of redemption, and with such powers as aforesaid, as by him or them shall be required and be tendered to be made, done, and executed. In witness, &c. (a).

The schedule above referred to.

(*Furniture and Effects.*)

(a) A mortgage of fixtures must be registered under the Bills of Sale Act (17 & 18 Vict. c. 36), as they are brought within the seventh section of the statute, which interprets personal chattels to

## 29.

*Equitable Mortgage(b).*

An agreement made this       day of       between       PRECEDENT 29.  
    of, &c. (*mortgagor*), of the one part,  
 and     of, &c. (*mortgagee*), of the other       EQUITABLE MORTGAGE.  
 part. Whereas the said (*mortgagee*) has this day       Parties.  
    mean fixtures capable of complete transfer by delivery. (Waterfall       Recital of  
    v. Penistone, 6 Ell. & Bl. 876).       loan.

(b) It is a rule in equity, that an equitable mortgage may be made by mere deposit of deeds, without any written agreement (*Russel v. Russel*, 1 Br. C. C. 269; *Parker v. Housefield*, 2 M. & K. 419), and even without a word passing (*Ex parte Langston*, 17 Ves. 227; *Ex parte Kensington*, 2 Ves. & B. 79). A deposit will operate as a security for further advances. (*Ex parte Whitbread*, 19 Ves. 209). A deposit of deeds to a firm of bankers remains a valid security to the continuing partners, although a change may take place in the members of the firm after the deposit. (*Ex parte Smith*, 1 M. D. and De G. 165). A deposit of some of the deeds will be sufficient. (*Ex parte Wetherell*, 11 Ves. 398). An equitable mortgage of property held by copy of court-roll may be made by deposit of the copies (*Ex parte Warner*, 19 Ves. 202). A deposit of title-deeds may create a lien on fixtures (*Ex parte Bentley*, 2 M. D. & De G. 591), and on furniture (*Ex parte Hunt*, 1 M. D. & De G. 139). Still the practice of having an equitable deposit without an accompanying written agreement has been condemned by the Courts (*Ex parte Whitbread*, 19 Ves. 209, see p. 211; *Ex parte Hooper*, 1 Mer. 7, see p. 9). Indeed, as questions respecting the intentions of the parties frequently arise, a writing is absolutely necessary in order to prevent litigation (1 Crabb Conv. 73). In many cases, however, it is important to raise a loan immediately, as, for instance, by a customer from his banker's, in which case the mere deposit of deeds by way of security is useful, but on all occasions, where practicable, there should be a written agreement accompanying the deposit of deeds. A mortgage by deposit only cannot of course be registered in a register court, because there is nothing to register, but it has-always been the practice to register a mortgage by agreement or memorandum (2 Dav. Conv. 86). An equitable mortgage is liable to the same stamp duty as a regular mortgage, but this instrument

How an equitable mortgage may be made.

Liable to stamp duty.

PRECEDENT 29.

EQUITABLE MORTGAGE.

That deposit of deeds has been made.

Agreement for security.

advanced to the said (*mortgagor*) the sum of £ , as he doth hereby admit and acknowledge. And whereas for securing the payment of the said sum of £ and interest, as hereinafter expressed, the said (*mortgagor*) has deposited with the said (*mortgagee*) the several deeds and writings specified in the schedule hereto: Now in consideration of the premises, and for securing unto the said (*mortgagee*) the payment of the said sum of £ and interest, He the said (*mortgagor*), for himself, his heirs, executors, and administrators, Doth hereby agree and declare with and to the said (*mortgagee*), his heirs, executors, administrators, and assigns, that the several deeds and writings specified in the schedule hereto shall remain as security unto him, the said (*mortgagee*), his executors, administrators, and assigns, for payment of the said sum of £ with interest thereon at the rate of £ per cent. per annum, payable half-yearly on the day of , and the day of , in every year, and that until payment thereof it shall be lawful for the said (*mortgagee*), his heirs, executors, administrators, or assigns, to retain possession of the said deeds and writings: And further, that he the said (*mortgagor*), his heirs, executors, and administrators, and all neces-

having once borne the *ad valorem* duty, the mortgage afterwards executed in pursuance of it is liable only to the stamp applicable to an ordinary deed (6 Byth. & Jarm. 234 n). A mere agreement to mortgage, where there is no deposit of title-deeds, will not in equity defeat the legal claims of other parties, and ought not, therefore, to be substituted in any case for a regular mortgage (Finch v. Winchelsea, 1 P. Wms. 277). The equitable mortgagee is entitled at his option either to a decree for sale by virtue of the charge, or to insist on a legal mortgage or a foreclosure by virtue of the agreement to execute such legal mortgage. (*Matthews v. Goodday*, 8 Jur. N. S. 90, V. C. K.)

Will not defeat legal claims.

To what decree equitable mortgagee entitled.



sary parties, will, whenever thereunto required, at his and their own expense, make and perfect all such acts, deeds, and assurances as shall be requisite for legally and effectually conveying unto or vesting in the said (*mortgagee*), his heirs and assigns, the hereditaments comprised in and conveyed by the said several deeds and writings, and for enabling him or them to sell the same and retain out of the proceeds thereof the expenses of and attending such sale, and the principal money and interest intended to be hereby secured. As witness, &c.

PRECE-  
DENT 29.

EQUITABLE  
MORTGAGE.

To execute  
all neces-  
sary deeds.

30.

*Further Charge on* \_\_\_\_\_ *in the Parish of* \_\_\_\_\_  
\_\_\_\_\_, *in the County of* \_\_\_\_\_, *for* \_\_\_\_\_  
*Securing the Sum of £* \_\_\_\_\_ *and Interest (a).*

This Indenture, made, &c. between \_\_\_\_\_ of \_\_\_\_\_ PRECE-  
in the County of \_\_\_\_\_ (*mortgagor*), DENT 30.  
of the one part, and \_\_\_\_\_ of \_\_\_\_\_ FURTHER  
County of \_\_\_\_\_ (*mortgagee*), of the other part. CHARGE.  
[*Recite mortgage*]. And whereas the said (*mortgagee*) Parties.  
has on the application of the said (*mortgagor*) this Recitals—  
day lent unto him the further sum of £ \_\_\_\_\_ as he of mort-  
the said (*mortgagor*) doth hereby acknowledge, and gage.  
such loan was so made on the terms that the repay- Of applica-  
ment thereof with interest for the same should be tion for  
secured in manner hereinafter contained. Now this loan.  
Indenture witnesseth that the said (*mortgagor*) doth Testatum.  
hereby for himself, his heirs, executors, and adminis-  
trators, covenant with the said (*mortgagee*), his

(a) A deed of further charge is not often indorsed on the mortgage, as there is always great objection on the part of a mortgagee to part with the custody of his security, even for such a temporary purpose.

Further  
charge not  
often in-  
dorsed.

PRECE-  
DENT 30.  
FURTHER  
CHARGE.  
Covenant  
for pay-  
ment.

Covenant  
of charge.

executors, administrators, and assigns, that he the said (*mortgagor*), his heirs, executors, or administrators, shall and will truly pay or cause to be paid, unto the said (*mortgagee*), his executors, administrators, or assigns, the said sum of £            now lent and advanced as aforesaid, upon the            day of            in the year           , and also shall and will in the meantime or during the continuance of the said sum on this security, pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, interest for the same sum of £            after the rate of £            per cent. per annum half-yearly, on the            day of            and the day of            in every year, and shall and will make all such payments without any deduction or abatement whatsoever. And the said (*mortgagor*) doth hereby further covenant with the said (*mortgagee*), his executors, administrators, and assigns, that the said hereinbefore mentioned messuages or tenements, lands and hereditaments, shall henceforth stand charged and chargeable with the repayment not only of the said sum of £            already advanced as aforesaid, and the interest for the same, as also of the said sum of £            now advanced unto the said (*mortgagor*) by the said (*mortgagee*), as aforesaid, together with interest thereon after the rate and in manner aforesaid, and that the said sum of £            so now advanced and the interest thereof may be raised and levied by the said (*mortgagee*), his heirs, executors, administrators, or assigns, by means of all or any of the powers or authorities contained in the said indenture, dated the            day of            for raising and levying the said sum of £            already lent and advanced and the interest thereof: And that

the same premises shall not be redeemable until the said sum of £                      now advanced, and interest thereon, as aforesaid, as well as the said sum of £                      already advanced, and the interest for the same, are paid or satisfied. And the said (*mortgagor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that the said (*mortgagor*), his heirs or assigns, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*mortgagee*), his executors, administrators, or assigns, and at the costs and charges of the said (*mortgagor*), his heirs, executors, administrators or assigns, make, do, execute and perfect, or cause or procure to be made, done, executed and perfected, all such further and other lawful and reasonable acts, deeds, and assurances for the further and better charging the said messuages or tenements, lands, and hereditaments hereby mortgaged or intended so to be, with the appurtenances, with the payment unto the said (*mortgagee*), his executors, administrators, or assigns, of the said sum of £                      and the interest thereof, according to the true intent and meaning of these presents as by the said (*mortgagee*), his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required, and be tendered to be made, done, and executed. In witness, &c.

PRECE-  
DENT 30.FURTHER  
CHARGE.Covenant  
for further  
assurance.

## 31.

*Transfer of Mortgage of                      situate in  
for securing £                      and Interest at £                      per  
Cent. per Annum. By Indorsement on Indenture  
of Mortgage. (a)*

PRECE-  
DENT 31.

TRANSFER  
OF MORT-  
GAGE.

Parties.

Parties to  
transfer of  
mortgage.

This Indenture, made &c. between the within-named  
(mortgagee), of the first part, the within-named  
(mortgagor), of the second part, and                      of

(a) The only necessary parties to the transfer of a mortgage are the mortgagee and transferee, but it is desirable, where practicable, to make the mortgagor a party, because then the transfer will be subject to all the equities existing at the time of transfer between the mortgagor and mortgagee. (*Earl of Macclesfield v. Fitton*, 1 Vern. 168; *Bradwell v. Catchpole*, 3 Sw. 78, see p. 79; *Norrish v. Marshall*, 5 Mad. 475). Where the mortgagor is a party, if he can be induced to enter into a new covenant with the transferee for payment of the mortgage money and interest, an advantage would be thereby gained, as by such means the transferee would be able to sue the mortgagor in his own name instead of as the attorney of the mortgagee. (2 Dav. Conv. 815). When the mortgagor is a party and no new power of sale is given, it is important, in order to prevent any question from arising on such point, that the old power of sale should be expressly recognised and confirmed by the mortgagor. (*Curling v. Shuttleworth*, 6 Bing. 121; *Young v. Roberts*, 15 Beav. 558).

Usual but  
not neces-  
sary to  
assign  
mortgage  
debt.

It is not necessary that the mortgage debt should be assigned on a transfer in order to retain its priority (*Phillips v. Gutteridge*, 4 De G. & J. 531; *Watts v. Symes*, 1 De G. M. & G. 240); but it is always prudent to do so when the mortgagor is a party, in order to show that the transferee is depending on the old security. However, though the more usual and better course is to transfer the mortgage debt, yet some gentlemen, where the mortgagor concurs—in which case only, of course, such plan can be adopted—convey the property discharged from the old and subject to the new proviso for redemption. (6 Byth. & Jarm. 319 n.) The inconvenience of this plan is, that a doubt might arise whether the old debt be not thereby extinguished and a mesne incumbrancer let in to have priority.

&c. (*transferee*), of the third part. Whereas the principal sum of £            secured by the within-written indenture remains due and owing, but all interest thereon has been paid up to the day of the date of these presents as the said (*mortgagor*) and (*mortgagee*) do hereby respectively admit and acknowledge. And whereas inasmuch as the said (*transferee*) has proposed to pay unto the said (*mortgagee*) the said sum of £            he has agreed to make the transfer hereinafter contained of the within-written mortgage security. Now this Indenture witnesseth that in pursuance and performance of the said recited agreement in such behalf, and in consideration of the sum of £            to the said (*mortgagee*), with the privity and approbation of the said (*mortgagor*), (testified by his executing these presents) now paid by the said (*transferee*), the receipt &c., He, the said (*mortgagee*), with the privity of the said (*mortgagor*), (testified as aforesaid) Doth by these presents assign and transfer unto the said (*transferee*), his executors, administrators and assigns, All that the principal sum of £            sterling and all interest secured

PRECEDENT 31.

TRANSFER OF MORTGAGE.

Recitals—that principal money remains owing.

Of agreement to make transfer. First testamentum.

Assignment of principal money and interest.

Where a mortgagee without the concurrence of the mortgagor, and without first calling upon him to redeem, assigns the mortgage, he is not entitled to add his costs of such transfer to his mortgage security. (Re Radcliffe, 2 Jur. N. S. 387 M. R.).

Costs of transfer.

Where several mortgages were transferred by the same deed, the estate of a deceased mortgagee had to bear the expense of a covenant for production, on the ground that the necessity for the covenant arose from the mortgagee, or those representing him, mixing the lands comprised in the several securities. (Capper v. Terrington, 1 Col. 103; s.c. 13 Law J. N. S. Ch. 239). In the transfer of the mortgage by a separate deed there should be a power to appoint new trustees exactly similar to that in the settlement, so that on any change in the trusteeship, new trustees may be appointed without reference to the settlement.

Transfer of mortgages to be settled.

PRECE-  
DENT 31.

TRANSFER  
OF MORT-  
GAGE.

Power of  
attorney.

Haben-  
dum.

Second tes-  
tatum.  
Convey-  
ance.

Parcels.

Haben-  
dum.

Subject to  
equity of  
redemp-  
tion.

by the within-written indenture henceforth to become due for the same, and all rights and remedies for recovery of the said principal money and interest; Together with full power and authority for the said (*transferee*), his executors, administrators, and assigns, in the name or names of the said (*mortgagee*), his executors or administrators, to demand, sue for, recover and receive of and from whomsoever it may concern, the said principal money and interest, and to sign and give receipts and discharges for the same. To have, hold, receive, and take the said principal sum of £            and interest hereby assigned, or intended so to be, unto and by the said (*transferee*), his executors, administrators, and assigns, absolutely. And this Indenture further witnesseth that for the considerations aforesaid, He the said (*mortgagee*), with the like privity of the said (*mortgagor*) (testified as aforesaid), Doth by these presents grant and convey, and He the said (*mortgagor*) Doth by these presents grant and confirm unto the said (*transferee*), his heirs, and assigns, All and singular the messuages, lands, tenements, and hereditaments which were comprised in or conveyed by the within-written indenture, and their respective rights, members, and appurtenances. (*And all the estate &c.*): To have and To hold the said messuages, lands, tenements, hereditaments, and premises hereby assured, or intended so to be, and the appurtenances, unto and to the use of the said (*transferee*), his heirs and assigns, for ever, subject nevertheless to such equity of redemption as the same are subject to under or by means of the within-written indenture, and with all the powers of sale and other provisions within given or contained for securing or obtaining payment of

the said principal money and interest, and the costs, charges, and expenses therein mentioned, and which powers and provisions the said (*mortgagor*) doth hereby grant, ratify, and confirm unto the said (*transferee*), his heirs, executors, administrators, and assigns, in the same or the like manner as if by the said indenture the same had been originally given or granted unto him or them, or as near thereto as may be. (*Covenant by mortgagee against incumbrances*). In witness, &c.

PRECEDENT 31.

TRANSFER OF MORTGAGE.  
Ratification of powers.

32.

*Reconveyance. By Indorsement (a).*

This Indenture made, &c. between the within-named (*mortgagee*) of the one part, and the within-named (*mortgagor*) of the other part. Whereas the within-mentioned principal sum of £            and all interest for the same have been paid unto the said (*mortgagee*), as he doth hereby admit and acknowledge. And whereas the said (*mortgagor*) has requested that the messuages, lands, tenements, and hereditaments comprised in or conveyed by the within-written Indenture, and their appurtenances, may be reconveyed in manner hereinafter contained. Now this Indenture witnesseth that in pursuance of the said recited desire in such behalf, and in consideration of the repayment of the said principal money and interest, He the said (*mortgagee*) Doth by these presents

PRECEDENT 32.

RECONVEYANCE.

Parties.

Recitals—payment of principal money and interest.

Of request for reconveyance.

Testatum.

(a) A reconveyance should be made by indorsement, not only for the sake of conciseness, but in order that when the mortgage deed is produced, it shall have therewith the evidence of the reconveyance, for otherwise the deed may be lost, and difficulty experienced in proving that it was ever executed or that the mortgage debt has been paid. (2 Dav. Conv. 828.)

Reconveyance should be made by indorsement.

PRECE-  
DENT 32.

RECONVEY-  
ANCE.

Parcels.

Haben-  
dum.

Discharged  
from mort-  
gage.

grant and convey unto the said (*mortgagor*), his heirs and assigns, All and singular the messuages, lands, tenements, and hereditaments which were comprised in or conveyed by the within-written Indenture and their respective rights, members, and appurtenances. And all the estate, &c. To have and To hold the said messuages, lands, tenements, hereditaments, and premises hereby assured or intended so to be, and their appurtenances, unto and to the use of the said (*mortgagor*), his heirs and assigns, for ever, freed and absolutely discharged of and from the within-written indenture of mortgage and all principal money and interest thereby secured, and from the powers and remedies for obtaining payment of the same. (*Covenant by mortgagee that he has done no act to incumber.*) In witness, &c.

33.

*Release of Land situate in \_\_\_\_\_, in the County  
of \_\_\_\_\_, discharged from Mortgage Security.*

PRECE-  
DENT 33.

RELEASE  
OF LAND

Dis-  
CHARGED  
FROM  
MORT-  
GAGE.

Parties.

Recitals —  
of mort-  
gage.

That prin-  
cipal and  
interest  
remain  
owing.  
Of mort-  
gagor's  
debt to  
sell.

This Indenture, made &c. between \_\_\_\_\_ of &c.  
(*mortgagee*) of the one part, and \_\_\_\_\_ of &c.  
(*mortgagor*) of the other part. (*Recite mortgage.*)  
And whereas the said principal sum secured by the  
hereinbefore recited indenture of mortgage, with  
some interest, still remain due and owing thereon.  
And whereas the said (*mortgagor*) is desirous to  
sell the land and hereditaments hereinafter described  
and hereby assured or intended so to be, being part  
of the hereditaments comprised in the said mortgage  
security. And whereas the said (*mortgagee*) being  
satisfied that the messuages, lands, tenements, and  
hereditaments (other than the said land and heredita-



ments) comprised in or conveyed by the hereinbefore recited indenture of mortgage form a sufficient security to him for the repayment of the said principal sum thereby secured, has upon the request of the said (*mortgagor*), and to enable him to complete the said sale, agreed to release the said land and hereditaments, hereinafter described and hereby assured or intended so to be, from the said mortgage in manner hereinafter contained. Now this Indenture witnesseth that in pursuance and performance of the said recited agreement in such behalf and in consideration of the premises, He, the said (*mortgagee*), Doth by these presents grant, release, and confirm unto the said (*mortgagor*), his heirs and assigns, All, (*parcels. General words for Farms. Estate clause*). To have and To hold the said land, hereditaments, and premises hereby assured or intended so to be, unto and to the use of the said (*mortgagor*), his heirs and assigns, for ever, freed and absolutely discharged of and from the said principal sum secured by the hereinbefore recited indenture of mortgage, and from all interest payable in respect of the same. (*Covenant by mortgagee that he has done no act to incumber*). In witness, &c.

PRECEDENT 33.

RELEASE OF LAND DISCHARGED FROM MORTGAGE.

That mortgagee is satisfied with security.

Testatum.

Parcels.

Habendum.

Discharged from mortgage.

Covenant against incumbrances.

34.

*Demise by Mortgagee to Mortgagor of Mortgaged Estate in the Mortgagor's own occupation, at a Rent to Secure the Interest.*

This Indenture, made &c. between (*mortgagee*) of the one part, and (*mortgagor*) of the other part. (*Recite mortgage and describe parcels.*) And whereas the said messuages or tenements, farms, lands, and

PRECEDENT 34.

DEMISE BY MORTGAGEE TO MORTGAGOR.

Parties. Recitals—of mortgage.

PRECE-  
DENT 34.

DEMISE BY  
MORT-  
GAGEE TO  
MORT-  
GAGOR.

Of agree-  
ment to  
grant lease.  
Testatum.

Parcels.

Haben-  
dum.

Reserva-  
tion of rent  
equal to  
interest.

hereditaments, are now in the actual possession of the said (*mortgagor*), but upon the treaty for the said loan the said (*mortgagor*) agreed to accept a lease of the same from the said (*mortgagee*), at the yearly rent or sum of £ , for the purposes and subject to the provisions hereinafter expressed. Now this Indenture witnesseth that in pursuance of the said agreement, and in consideration of the yearly rent and covenants hereinafter reserved and contained on the part and behalf of the said (*mortgagor*), his executors, administrators, and assigns, to be paid, observed, and performed, He the said (*mortgagee*), so far as he is hereby authorised and not further or otherwise, Doth by these presents demise and lease unto the said (*mortgagor*), his executors, administrators, and assigns, All those the said messuages or tenements, farms, lands, and hereditaments, particularly mentioned and described in and conveyed to him the said (*mortgagee*) by the hereinbefore recited indenture of mortgage, with their rights, members, and appurtenances: To have and To hold the said messuages or tenements, farms, lands, and hereditaments hereby demised, and every part thereof, unto the said (*mortgagor*); his executors, administrators, and assigns, henceforth during the term of 21 years; Yielding and paying therefor yearly and every year unto the said (*mortgagee*), his executors, administrators, and assigns, one annual sum or yearly rent of £ , by two equal half-yearly payments or portions, on the . day of , and the . day of , in every year, without making any deduction or abatement from the same or any part thereof, for or in respect of any present or future taxes or impositions whatsoever, and the first half-yearly payment thereof

to be made on the            day of            next ensuing the date of these presents. And the said (*mortgagor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*mortgagee*), his executors, administrators, and assigns, that he the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall and will from time to time pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, or assigns, during the continuance of the present demise, the aforesaid annual sum or yearly rent of £            , on or at the days or times and in manner hereinbefore mentioned for payment of the same. Provided always, and it is hereby agreed and declared, that if the said yearly rent or annual sum of £            shall be in arrear by the space of days next after either of the days hereinbefore appointed for payment thereof, it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, to enter into or upon the said messuages or tenements, farms, lands, and hereditaments, hereby demised, or any part thereof, in the name of the whole, and to possess the same as in his former estate. And it is hereby also agreed and declared, that the said annual sum or yearly rent of £            is hereby made payable to the said (*mortgagee*), his executors, administrators, and assigns, as a further or auxiliary security for the regular payment to him, the said (*mortgagee*), his executors, administrators, or assigns, of the interest of the said sum of £            , for which purpose it is hereby further agreed and declared, that the said (*mortgagee*), his executors, administrators, or assigns, shall forbear from requiring the payment of the said annual sum or yearly rent hereby reserved until the interest of the said sum of £            , or some

PRECE-  
DENT 34.

DEMISE BY  
MORT-  
GAGEE TO  
MORT-  
GAGOR.

Covenant  
by mort-  
gagor for  
payment of  
rent.

Proviso for  
re-entry.

Declara-  
tion that  
rent is in-  
tended as  
security for  
interest.

PRECE-  
DENT 34.  
DEMISE BY  
MORT-  
GAGEE TO  
MORT-  
GAGOR.

Power to  
determine  
lease.

part thereof, shall be in arrear or unpaid by the space of        days: And that in case and so often as the interest of the said sum of £        shall be in arrear by the space of        days, then and so often the said (*mortgagee*), his executors, administrators, and assigns, shall and may, at their discretion, require and compel payment of the said annual sum or yearly rent and the arrears thereof, and by, with, and out of the same retain to and reimburse himself and themselves respectively all interest which shall be then due and in arrear, and all costs, charges, and expenses occasioned by non-payment of the same, and either retain the surplus or residue which shall remain of the said annual sum or yearly rent in satisfaction and discharge of the said principal sum of £        , or such part thereof as shall remain due on the hereinbefore recited mortgage security, or render or pay over the said surplus or residue of the said annual sum or yearly rent unto the said (*mortgagor*), his executors, administrators, or assigns. Provided lastly, and it is hereby agreed and declared, that it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, at any time, during the said term of 21 years, by any writing under his hand and seal, attested by one or more credible witness or witnesses, absolutely to determine and make void this present indenture of lease and the said term of 21 years hereby granted, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. In witness, &c.

## 35.

*Deed of Receivership (a).*

This Indenture, made &c. between of PRECEDENT 35.  
 &c. (*mortgagee*) of the first part of &c. RECEIVERSHIP DEED.  
 (*mortgagor*), of the second part, and of &c. Parties.  
 (*receiver*) of the third part. Whereas by indenture Recital of  
 bearing even date with and executed immediately mortgage.  
 before the execution of these presents and made  
 between the said (*mortgagor*) of the one part and the

(a) The appointment of a receiver is common in mortgage transactions, and is particularly useful in mortgages of life interests by tenants for life, and in other cases where it is important to prevent the interest from falling into arrear. (Hayes' Conc. Conv. 512, note by Coltman). The receiver in an ordinary receivership deed is the agent of the mortgagor only. (Jefferys v. Dickson, 1 Law R. Ch. App. 183). Utility of having a receiver.

Where the principal money is unpaid for one year after it has become payable, or the interest is six months in arrear, the mortgagee may now by statutory authority appoint or obtain the appointment of a receiver of the rents of the property. The course for the mortgagee to pursue is to appoint as receiver the person named for such purpose in the mortgage-deed, or if no person be so named, then by writing delivered to the mortgagor, or affixed on some conspicuous part of the property, to require him to appoint a proper person as receiver, and if no such appointment be made within ten days after such requisition, then the mortgagee may, by writing, appoint any person he may think fit. The receiver so appointed is to be deemed the agent of the mortgagor, and to have the usual powers of a receiver, and he may be removed by the like authority and another appointed in his place. The receiver is to have a commission not exceeding five per cent. on the amount of the money received, and he may, if directed by the mortgagee, insure the property. The receiver is to apply the money in the first place in discharge of all taxes, rates, and assessments, and in payment of his commission and of the insurance premiums, and in the next place in payment of the interest on the principal money, and pay the residue of such money to the mortgagor. (23 & 24 Vict. c. 145, s. 11, ss. 17-23). Appointment of receiver by statute.

PRECE-  
DENT 35.

RECEIVER-  
SHIP DEED.

said (*mortgagee*) of the other part, All and singular the &c. (*parcels*) mentioned or described in the schedule to these presents and their appurtenances have been mortgaged unto the said (*mortgagee*), his heirs and assigns, for securing the payment by the said (*mortgagor*), his heirs, executors, administrators, or assigns, unto the said (*mortgagee*), his executors, administrators, or assigns, of the sum of £ sterling, upon the day of 18 , and interest thereon after the rate of £ per cent. per annum half-yearly on the day of and the day of in each year, in the meantime or during the continuance of the said security. And whereas upon the treaty for the loan of the said sum of £ it was agreed that the punctual payment of the interest of the same sum should be secured by means of a receiver to be appointed in manner hereinafter contained, and that upon the nomination of the said (*mortgagee*) the said should be the first receiver to be so appointed.

Recital of  
intention  
to appoint  
receiver.

First tes-  
tatum.

Now this indenture witnesseth that in pursuance of the said recited agreement in such behalf and in consideration of the premises, He the said (*mortgagee*), with the privity and approbation of the said (*mortgagor*) (testified by his executing these presents), Doth by these presents bargain, sell, and demise, and He the said (*mortgagor*), on the nomination of the said (*mortgagee*) (testified by his executing these presents), Doth by these presents grant, demise, and confirm unto the said (*receiver*) and his assigns, All and singular the &c. (*parcels*) mentioned or described in the schedule to these presents and their respective appurtenances : To have and To hold the said hereby demised, or intended so to be, unto the said (*receiver*)

Demise.

Parcels.

Haben-  
dum.

and his assigns, for the term of 99 years, to commence from the day next before the day of the date of these presents and fully to be complete and ended if he the said (*receiver*) shall so long live : Nevertheless upon the trusts hereinafter expressed concerning the same (that is to say), Upon trust in case the interest on the said sum of £                      or any part thereof shall not be paid for                      days                      after any or either of the days in and by the said indenture of even date herewith appointed for payment of the same, then that the said (*receiver*) do and shall enter into and upon the said lands, hereditaments, and premises mentioned or described in the said schedule to these presents and recover, distrain for, collect, and receive the rents and profits then due and owing, and from time to time thereafter during the continuance of the said sum of £                      upon the security of the said indenture of even date herewith thereafter to become due and owing from or in respect of the said lands, hereditaments and premises, or any of them, and hold and apply the said rents and profits, or the clear moneys to be received or obtained therefrom, upon the trusts hereinafter expressed concerning the same. And this Indenture further witnesseth that in further pursuance of the said recited agreement in such behalf, He the said (*mortgagee*), by the direction of the said (*mortgagor*) (testified as aforesaid) Doth by these presents constitute and appoint, and He the said (*mortgagor*), upon the nomination of the said (*mortgagee*) (testified as aforesaid), Doth by these presents nominate, appoint, and confirm the said                      to be the receiver and attorney in the name or names of him the said (*mortgagee*) and the said (*mortgagor*), or either of them, and in their

PRECEDENT 35.

RECEIVERSHIP DEED.

For term of 99 years determinable.

Trusts of such term.

Second testamentum.

Appointment of receiver.

PRECE-  
DENT 35.

RECEIVER-  
SHIP DEED.

Recital of  
intention  
to appoint  
receiver.

First tes-  
tatum.

Demise.

Parcels.

Haben-  
dum.

said (*mortgagee*) of the other part, All and singular the &c. (*parcels*) mentioned or described in the schedule to these presents and their appurtenances have been mortgaged unto the said (*mortgagee*), his heirs and assigns, for securing the payment by the said (*mortgagor*), his heirs, executors, administrators, or assigns, unto the said (*mortgagee*), his executors, administrators, or assigns, of the sum of £ sterling, upon the       day of       18       , and interest thereon after the rate of £       per cent. per annum half-yearly on the       day of       and the       day of       in each year, in the meantime or during the continuance of the said security. And whereas upon the treaty for the loan of the said sum of £       it was agreed that the punctual payment of the interest of the same sum should be secured by means of a receiver to be appointed in manner hereinafter contained, and that upon the nomination of the said (*mortgagee*) the said       should be the first receiver to be so appointed.

Now this indenture witnesseth that in pursuance of the said recited agreement in such behalf and in consideration of the premises, He the said (*mortgagee*), with the privity and approbation of the said (*mortgagor*) (testified by his executing these presents), Doth by these presents bargain, sell, and demise, and He the said (*mortgagor*), on the nomination of the said (*mortgagee*) (testified by his executing these presents), Doth by these presents grant, demise, and confirm unto the said (*receiver*) and his assigns, All and singular the &c. (*parcels*) mentioned or described in the schedule to these presents and their respective appurtenances :

To have and To hold the said       hereby demised, or intended so to be, unto the said (*receiver*)



and his assigns, for the term of 99 years, to commence from the day next before the day of the date of these presents and fully to be complete and ended if he the said (*receiver*) shall so long live : Nevertheless upon the trusts hereinafter expressed concerning the same (that is to say), Upon trust in case the interest on the said sum of £                      or any part thereof shall not be paid for                      days                      after any or either of the days in and by the said indenture of even date herewith appointed for payment of the same, then that the said (*receiver*) do and shall enter into and upon the said lands, hereditaments, and premises mentioned or described in the said schedule to these presents and recover, distrain for, collect, and receive the rents and profits then due and owing, and from time to time thereafter during the continuance of the said sum of £                      upon the security of the said indenture of even date herewith thereafter to become due and owing from or in respect of the said lands, hereditaments and premises, or any of them, and hold and apply the said rents and profits, or the clear moneys to be received or obtained therefrom, upon the trusts hereinafter expressed concerning the same. And this Indenture further witnesseth that in further pursuance of the said recited agreement in such behalf, He the said (*mortgagee*), by the direction of the said (*mortgagor*) (testified as aforesaid) Doth by these presents constitute and appoint, and He the said (*mortgagor*), upon the nomination of the said (*mortgagee*) (testified as aforesaid), Doth by these presents nominate, appoint, and confirm the said                      to be the receiver and attorney in the name or names of him the said (*mortgagee*) and the said (*mortgagor*), or either of them, and in their

PRECEDENT 35.

RECEIVERSHIP DEED.

For term of 99 years determinable.

Trusts of such term.

Second testamentum.

Appointment of receiver.

PRECE-  
DENT 36.

RECEIVER-  
SHIP DEED.

Duties of  
receiver.

or either of their names to ask, demand, sue for, recover, collect, and receive of and from all and every or any of the present or future tenants or occupiers of the said mentioned or described in the said schedule to these presents respectively, or any other person or persons liable or who shall be liable to pay the same, the rents and profits at the time of any such default in payment of interest as aforesaid, due and from time to time thereafter to grow due, for or in respect of the said lands, hereditaments, and premises until such time as the said sum of £ and all interest for the same respectively, shall be paid, or the said lands, hereditaments, and premises respectively shall be discharged from the payment of the same, and to settle with the person or persons liable to pay the said rents, all accounts relating to the same rents, and to receive the balance of the said accounts respectively from the persons liable to the payment of the same respectively, or from any other persons who shall be willing to pay the said balances respectively, and to make distresses and bring actions as occasion shall require, and on receipt of the said rents and profits, or any part thereof, to make, sign, seal, execute, and deliver a good and sufficient receipt, release, and acquittance, or other discharge, for the whole or any part of the same rents, profits, and money, and generally to make, do, and execute any other act, deed, matter, or thing whatsoever, for or towards the recovering or obtaining payment of the rents and profits due and to grow due as aforesaid, and one or more attorney or attorneys under him for all or any of the purposes aforesaid, to make, nominate, substitute, and appoint, and at will and pleasure to revoke the same nomina-

tion, substitution, and appointment respectively, and notwithstanding any such nomination, substitution, or appointment, to exercise all or any of the powers hereby given to him the said (*receiver*). And the said (*mortgagee and mortgagor*) do and each of them doth give and grant unto the said (*receiver*) the full and whole power and authority of them the said (*mortgagee and mortgagor*), and each of them, over the premises, and do and each of them doth undertake to ratify, confirm, and allow to be valid, and sufficiently available to all intents and purposes all and whatsoever the said (*receiver*) shall lawfully do or cause to be done in and about the premises by virtue of these presents. And the said (*mortgagee and mortgagor*) do and each of them doth order and direct that the present or future tenants or occupiers of the said mentioned or described in the said schedule to these presents do pay to the said (*receiver*) or to his substitute or substitutes all the rents and profits due and to grow due for the said lands, hereditaments, and premises, and do and each of them doth hereby declare that the receipts of the said (*receiver*), or of his substitute or substitutes, shall be good and sufficient discharges to the respective tenants, occupiers, and other persons, for the rents and sums of money they shall respectively pay to the said (*receiver*) or his substitute or substitutes, and do and each of them doth hereby declare that after payment of the same rents and profits to the said (*receiver*) or to his substitute or substitutes the said tenants, occupiers, or other persons shall not be obliged to see to the application or be answerable for the misapplication of the rents and sums of money which shall be paid by them respec-

PRECE-  
DENT 35.

RECEIVER-  
SHIP DEED.

Ratifica-  
tion of  
powers.

Direction  
to tenants  
to pay  
rents to  
receiver.

Whose  
receipts to  
be good  
discharges.

PRECE-  
DENT 35.  
RECEIVER-  
SHIP DEED.

Trusts of  
moneys  
under re-  
ceivership.

tively. And it is hereby declared and agreed that all the rents and profits which shall be received by the substitute or substitutes of the said (*receiver*) shall be paid by the same substitute or substitutes to the said (*receiver*), and that the said (*receiver*), his executors and administrators, shall stand possessed of the moneys which shall be received by or paid to him or them under or by means of the demise and the trusts, powers, and authorities hereinbefore respectively contained, Upon the trusts hereinafter expressed concerning the same (that is to say): Upon trust that the said (*receiver*) do and shall thereout make such allowance to the tenants and pay and discharge such taxes, rates, and outgoings (if any) as the said (*mortgagor*), or his heirs, is, are, or would be bound to allow or pay for or in respect of the said premises or any of them, and in the next place retain and reimburse unto and for himself and his said substitute or substitutes all sums of money, costs, and charges in or about such receivership and a reasonable remuneration for himself and his said substitute or substitutes therein, not exceeding one shilling in the pound upon the amount of all such rents and moneys from time to time to be received, and in the next place pay unto the said (*mortgagee*), his executors, administrators, or assigns, the interest of the said sum of £ , or of so much thereof as shall remain unpaid, together with all costs, charges, and expenses as he or they shall pay, sustain, or incur by reason or in consequence of the non-payment of such interest or any part thereof, and after making all the payments and deductions aforesaid, do and shall pay the surplus that shall remain of the said rents, profits, and moneys unto the said (*mortgagor*),

his heirs or assigns, unless or until the said (*mortgagee*), his executors, administrators, or assigns, otherwise direct. But if and when he or they so require, then do and shall pay such surplus from time to time unto him or them in or towards satisfaction of the said principal sum of £        or so much thereof as shall remain unpaid, and, upon and for no other trust, intent, or purpose whatsoever. Provided always, and it is hereby further declared and agreed, that as and when the said principal sum of £        and all interest thereon shall be fully paid and satisfied, or the said        mentioned or described in the said schedule to these presents, shall be discharged therefrom, and all such costs, charges, and expenses (if any) as the said (*receiver*) shall have incurred or sustained in or about the execution of the trusts and powers aforesaid, shall be fully paid or satisfied, or if and when the said (*mortgagee*), his executors, administrators, or assigns, by any writing to be endorsed upon these presents, or on any other instrument and to be signed by him or them so direct, then and in any or either of such cases the said term of 99 years so determinable as aforesaid, shall instantly cease and be at an end. And it is hereby further agreed, and the said (*mortgagor*) doth hereby covenant with the said (*mortgagee*), his heirs, executors, administrators, and assigns, that in case the said (*receiver*) shall by death or other disability be disqualified or rendered incapable to collect and receive the rents and profits of the said lands, hereditaments, and premises, hereinbefore demised or intended so to be, or shall neglect or refuse to proceed therein in manner aforesaid, or shall otherwise misbehave himself in the trusts hereby reposed in him,

PRECE-  
DENT 35.

RECEIVER-  
SHIP DEED.

Proviso for  
cessor of  
term.

Provision  
for ap-  
pointment  
of new  
receiver.

PRECE-  
DENT 85.

RECEIVER-  
SHIP DEED.

whilst the said sum of £        or any part thereof, shall remain or continue on the aforesaid security, then and in any of the said cases the said (*mortgagor*), his heirs or assigns, shall and will join with the said (*mortgagee*), his heirs, executors, administrators, or assigns, in removing the said receiver, if then living, from his said employment, and shall and will in any of the cases aforesaid, duly constitute and appoint or authorise such other fit person or persons in the place or stead of the said (*receiver*) as the said (*mortgagee*), his executors, administrators, or assigns, shall from time to time nominate, direct, or appoint, and join and concur with them or him in a demise in like manner as aforesaid unto such new receiver of the said premises for a like term of years, determinable in like manner; Upon trusts and with powers to collect, receive, and pay the rents and profits of the said lands, hereditaments, and premises, upon and for the trusts and purposes hereinbefore mentioned, and so from time to time when and as the like case shall happen; And that in case the said (*mortgagor*), his heirs or assigns, shall neglect or refuse so to do for the space of        days after the death, incapacity, or misbehaviour of the said (*receiver*), or such receiver so to be nominated and appointed as aforesaid, then and in such case and from time to time, as often as the same shall happen, it shall be lawful for the said (*mortgagee*), his executors, administrators, or assigns, if he or they shall think fit, without the consent or concurrence of the said (*mortgagor*), his heirs or assigns, to constitute and appoint some fit person to collect, receive, and pay the rents and profits of the said lands, hereditaments, and premises, and to demise the same

to him in the manner, upon the trusts and for the purposes aforesaid, as the said (*mortgagee*), his executors, administrators, or assigns, shall think fit. And it is hereby declared and agreed, that the said (*receiver*), and the person or persons to be substituted from time to time in his place or stead shall be and be considered as the agent of the said (*mortgagor*), his heirs, executors, administrators, and assigns, and that the said (*mortgagor*), his heirs, executors, administrators, or assigns, shall bear the loss of all damages to arise by or from the misconduct or mismanagement of the said (*receiver*), or other the person to be appointed receiver from time to time as aforesaid. Provided also, and it is hereby further declared and agreed that, notwithstanding anything hereinbefore contained, the said (*receiver*), or the receiver to be appointed from time to time as aforesaid, shall not take or receive any of the said rents and profits of the said

PRECEDENT 35.

RECEIVERSHIP DEED.

Receiver to be agent of mortgagor.

Receiver not to take rents until interest in arrear.

, hereby demised or intended so to be in the meantime, until the interest of the said sum of £ shall be in arrear for the space of      days after some or one of the days or times so appointed for payment of the same. Provided also, and it is hereby further declared and agreed, that the said

Indemnity clause.

and (*receiver and mortgagee*), respectively, and their respective heirs, executors, administrators, or assigns, and also the person who from time to time shall be appointed the receiver by virtue of the provision hereinbefore contained, his heirs, executors, administrators, and assigns, respectively, shall severally and respectively be charged and chargeable only for such moneys as they respectively shall actually receive by virtue of the trusts, powers, or confidence hereby in them reposed, and that any one or more of

PRECE-  
DENT 35.

RECEIVER-  
SHIP DEED.

them shall not be answerable or accountable for the other or others of them, nor for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them only and respectively for his and their own acts, receipts, neglects, or defaults, respectively; and that they or any of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust-moneys shall or may be deposited for safe custody, or otherwise in the execution of the trusts hereinbefore contained, and that they or any or either of them shall not be answerable or accountable for any misfortune, loss, or damage which may happen in the execution of the aforesaid trusts or in relation thereto, except the same shall happen by or through his or their own wilful default respectively, and then and in that case each person respectively shall singly and alone be answerable for such loss and damage as shall arise from his and their own default; and also that it shall be lawful for the said (*mortgagee*), his heirs, executors, administrators, and assigns, and also the said (*receiver*) and every such receiver to be appointed as aforesaid, and every or any of them, their and every of their heirs, executors, administrators, and assigns, by and out of the moneys which shall come to their respective hands by virtue of the trusts aforesaid, to deduct, retain, take, and reimburse to and for himself and themselves respectively, and to allow to each other all costs, charges, damages, and expenses which they or any of them shall or may suffer, expend, disburse, lay out, be at or be put unto in or about the execution of the aforesaid trusts, powers, and authorities. In witness, &c.



## 36.

*Settlement of a sum of £        £3 per cent. Consolidated  
Annuities on Marriage—Upon Trusts for the Benefit  
of Intended Husband and Wife and their Children.*

This Indenture, made &c. between A. B., of &c. (*intended husband*), of the first part, C. D., of &c. (*intended wife*), of the second part, and E. F., of &c., and G. H. of &c. (*trustees*), of the third part. Whereas a marriage has been agreed upon and is intended to be forthwith solemnized between the said A. B. and C. D. And whereas, upon the treaty for the said intended marriage, it was agreed that the sum of £        £3 per cent. Consolidated Annuities belonging to the said C. D. should be settled upon the trusts hereinafter expressed. And whereas, in part performance of the said agreement, the said sum of £        £3 per cent. Consolidated Annuities has been this day transferred into the names of the said E. F. and G. H. in the books of the Bank of England. Now this Indenture witnesseth that, in pursuance and further performance of the said recited agreement, and in consideration of the said intended marriage, it is hereby declared and agreed that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, or other the trustee or trustees to be appointed in his or their stead, do and shall stand possessed of the said sum of £        £3 per cent. Consolidated Annuities upon the trusts hereinafter expressed (that is to say): Upon trust for the said C. D. until the solemnization of the said intended marriage, and from and after that event then upon trust that the said trustee or trustees do

PRECE-  
DENT 36.

SETTLE-  
MENT OF  
PERSONAL  
ESTATE.

Parties.

Recitals—  
of intended  
marriage.

Of inten-  
tion to  
settle  
stock.

That stock  
has been  
transferred  
to trustees.

Testatum.

Trusts of  
stock.

PRECE-  
DENT 36.

SETTLE-  
MENT OF  
PERSONAL  
ESTATE.

To invest  
same.

And pay  
dividends  
or interest  
to intended  
wife for  
her sepa-  
rate use.

Then to  
husband  
for his life.

and shall either continue the said sum of £      £3  
per cent. Consolidated Annuities in its present state  
of investment, or with the consent or approbation in  
writing of the said C. D. during her life, and after  
her death of the said A. B. during his life, and after  
the death of the survivor of them then in the discre-  
tion of the said trustee or trustees, lay out or invest  
the same in or upon the government or parliamentary  
stocks or funds of Great Britain, or real securities  
in England or Wales, but not in Ireland, and stand  
possessed of the said stocks, funds, and securities  
upon the trusts hereinafter expressed (that is to say) :  
Upon trust that the said trustee or trustees do and  
shall pay the dividends, interest, and income of the  
said stocks, funds and securities from time to time  
to become due during the life of the said C. D. unto  
such person or persons, for such intents and purposes,  
and in such manner and form as she, the said C. D.,  
notwithstanding her coverture, by any note or writing  
(but not by way of charge, mortgage, or other dis-  
position) shall direct or appoint; And in default of  
any such direction or appointment, then into her own  
hands for her own sole use, separate and apart from  
the said A. B. her intended husband, and without  
being in any manner under his control or subject to  
his debts, contracts, forfeitures, or engagements, and  
so that the receipts of the said C. D. may be effectual  
discharges for the same when due, but not before; And  
after the decease of the said C. D. then the said  
trustee or trustees do and shall pay the dividends,  
interest, and income of the said stocks, funds, and  
securities unto the said A. B. or his assigns, during  
his life, for his and their own absolute use and  
benefit; And from and after the decease of the sur-

vivor of the said A. B. and C. D. his intended wife, the said trustee or trustees shall stand possessed of the said stocks, funds, and securities, and the dividends, interest, and income of the same, Upon trust for the child, grandchild, or other issue, or all or any one or more of the children, grandchildren, or other issue of the said intended marriage (such grandchildren or more remote issue to be born in the lifetime of the said A. B. and C. D. or one of them), in such parts, shares, and proportions, and upon such trusts, for such intents and purposes, and in such manner and form as they the said A. B. and C. D., by any deed or instrument in writing, by them sealed and delivered in the presence of and attested by two or more credible witnesses shall jointly direct or appoint; And in default of and subject to every or any such joint direction or appointment then as the survivor of the said A. B. and C. D. his intended wife, by any deed or instrument in writing, executed as aforesaid, or by his or her last will and testament or any codicil thereto shall direct or appoint; And in default of and subject to every or any such last mentioned direction or appointment, then upon trust for the child if only one, or all the children if more than one, of the said intended marriage, who respectively being a son or sons shall attain the age of 21 years, or die under that age leaving surviving issue, or being a daughter or daughters shall attain that age or be married, and equally between or among them, if more than one, as tenants in common; And in case there shall be no child of the said intended marriage, who being a son shall attain the age of 21 years or die under that age leaving surviving issue, or being a daughter shall attain that age or be married, then in case the said

PRECE-  
DENT 36.

SETTLE-  
MENT OF  
PERSONAL  
ESTATE.

Corpus of  
fund to  
children or  
issue of  
marriage.

According  
to joint ap-  
pointment  
of intended  
husband  
and wife.

Or ap-  
pointment  
of survivor  
by deed or  
will.

In default  
to children  
of mar-  
riage.

PRECE-  
DENT 36.

SETTLE-  
MENT OF  
PERSONAL  
ESTATE.

Ultior  
trusts if no  
child of  
marriage.

Hotchpot  
clause.

Formal  
provi-  
sions.

C. D. shall survive the said A. B. her intended husband, upon trust for her the said C. D., her executors and administrators; but in case the said C. D. shall die in the lifetime of the said A. B. her intended husband, then upon such trusts for such intents and purposes, and in such manner and form as she the said C. D., notwithstanding her coverture, by her last will and testament, or any codicil thereto, shall direct or appoint; And in default of and subject to every or any such direction or appointment as last aforesaid, then upon trust for the person or persons who, at the death of the said C. D. shall be of her blood and in kin to her, and who either in his, her, or their own right, or in right of his, her, or their representation, would be entitled to the same under the statutes for the distribution of the effects of intestates, in case the said C. D. were possessed of the same and had died intestate and free from coverture; and if there shall be more than one such person, then to be divided between them in such parts, shares, and proportions as they would be entitled thereto under the same statutes, and upon and for no other trust, intent, or purpose whatsoever. Provided always, and it is hereby declared and agreed, that in the event of any appointment being made in favour of any child or children of the said intended marriage, such child or children shall bring his or her appointed share into hotchpot, and account for the same before being entitled to any part of the residue or portion unappointed of the said stocks, funds, and securities. (*Proviso for maintenance and advancement. Power to give receipts. Power to appoint new trustees and their indemnity*). In witness, &c.

## 37.

*Settlement on Marriage of Real Estate to uses to secure Pin-money to intended Wife—to Husband for life—to secure Jointure Rent-charge to intended Wife—with remainders in tail in favour of Children, and other usual powers and provisions.*

This Indenture, made &c., between A. B., of &c. PRECE-  
DENT 37.  
*(intended husband)*, of the first part, C. D., of &c.  
*(intended wife)*, of the second part, E. F., of &c., and  
 G. H., of &c. *(general trustees)*, of the third part,  
                     of &c., and                      of &c. *(trustees of pin-money)*,  
 of the fourth part,                      , of &c., and  
 of &c. *(trustees of jointure term)*, of the fifth part, and  
 of &c., and                      of &c. *(trustees of term for*  
*portions)*, of the sixth part. Whereas the said A. B.  
*(intended husband)*, is seised in fee simple of the  
 manor, messuages, lands, tenements, and heredita-  
 ments hereinafter described, and hereby assured or  
 intended so to be. And whereas a marriage has been  
 agreed upon, and is intended to be forthwith solemn-  
 ized between the said A. B. and C. D. And whereas  
 upon the treaty for the said intended marriage it was  
 agreed that the said manor, messuages, lands, tene-  
 ments, and hereditaments should be conveyed to the  
 uses and upon the trusts hereinafter expressed con-  
 cerning the same. Now this Indenture witnesseth  
 that, in pursuance of the said recited agreement in  
 such behalf, and in consideration of the said intended  
 marriage, He the said A. B. *(intended husband)*, with  
 the privity and approbation of the said C. D. *(in-*  
*tended wife)* (testified by her executing these pre-

SETTLE-  
MENT OF  
REAL  
ESTATE.  
Parties.

Recitals—  
of seisin.  
Of in-  
tended  
marriage.

Of agree-  
ment to  
settle.

Testatum.

PRECEDENT 37.

SETTLEMENT OF  
REAL  
ESTATE.  
Parcels.  
Haben-  
dum.

To use of  
trustees of  
pin-money  
for 99  
years.

Remainder  
to intended  
husband  
for life.

Then to  
uses to  
secure  
jointure  
rent-  
charge.

Remainder  
to trustees  
for 200  
years for  
securing  
jointure.

sents), Doth by these presents grant and convey unto the said E. F. and G. H. (*general trustees*), their heirs and assigns, All that manor, &c. (*Parcels, general words for a manor, estate clause*): To have and To hold the said manor, messuages, lands, tenements, hereditaments, and premises hereby assured or intended so to be, unto the said E. F. and G. H., their heirs and assigns, to the use of the said A. B., his heirs and assigns, until the solemnization of the said intended marriage, and from and immediately after that event then to the uses and upon the trusts hereinafter expressed, (that is to say): To the use of the said                      and                      (*trustees of pin-money*), their executors, administrators, and assigns, for the term of 99 years without impeachment of waste nevertheless, upon the trusts hereinafter expressed concerning the same, and from and immediately after the expiration or other sooner determination of the said term of 99 years, and in the meantime subject thereto and to the trusts thereof; To the use of the said A. B. (*intended husband*) during his life without impeachment of waste, and after the decease of the said A. B. (*intended husband*), then to the use, intent and purpose, &c. (*Uses that intended wife may take jointure rent-charge, with powers of distress and entry*). And as to the said manor, messuages, lands, and hereditaments (subject to the said yearly rent-charge of £                      , and the remedies hereinbefore reserved for the recovery thereof), from and immediately after the decease of the said A. B. (*intended husband*), to the use of the said                      and                      (*trustees of jointure term*), their executors, administrators, and assigns, during the term of 200 years thence next ensuing, without impeachment of waste nevertheless, upon the trusts herein-

PRECEDENT 37.

**SETTLE-  
MENT OF  
REAL  
ESTATE.**

**Remainder  
to trustees  
for 500  
years for  
securing  
portions.**

Remainder  
to use of  
first and  
other sons  
in tail  
male.

Remainder  
to use of  
first and  
other  
sons in  
tail  
general.

PRECE-  
DENT 37.

SETTLE-  
MENT OF  
REAL  
ESTATE.  
Remain-  
der to  
daughters  
in tail  
general.

Remainder  
to use of  
settlor.

Usual  
trusts—  
powers and  
covenants  
for title.

respective heirs of the body and bodies of all and every such son and sons, the elder of such sons and the heirs of his body to be preferred to and to take before the younger of such sons and the heirs of his body; And for default of such issue then to the use of all and every the daughter and daughters of the said A. B. (*intended husband*), by the said C. D. (*intended wife*), equally to be divided between or amongst them share and share alike as tenants in common, and the several and respective heirs of the body and bodies of all and every such daughter and daughters; And in case there shall be a failure of issue of any of such daughters, then as to the share or shares (as well surviving or accruing as original) of any such of them whose issue shall so fail, to the use of the survivors or survivor and others or other of them equally, to be divided between or amongst them if more than one share and share alike as tenants in common, and the several and respective heirs of the bodies and body of such surviving or other daughters or daughter; and if all such daughters but one shall die without issue, or there shall be but one such daughter, then to the use of such one or only daughter and the heirs of her body; And for default of such issue, then to the use of the said A. B. (*intended husband*), his heirs and assigns, for ever, and to, for, and upon no other use, trust, intent or purpose whatsoever. (*Trusts of term for securing pin-money. Trusts of term for securing jointure rent-charge. Trusts of term for raising portions. Powers where desired to jointure an after-taken wife, and to charge with portions in favour of children of future marriage. Power to lease for twenty-one years, and, where necessary,*



*powers to grant building leases, to lease for lives, and to lease mines. Powers of sale and exchange. Power to appoint new trustees, and clause of indemnity, and covenants for title). In witness, &c.*

PRECE-  
DENT 37.  
  
SETTLE-  
MENT OF  
REAL  
ESTATE.

38.

*Deed of Disentail. (a)*

This Indenture, made &c., between A. B., of &c. (*tenant in tail*), of the first part, C. D., of &c. (*protector*), of the second part, and E. F., of &c. (*releasee*), of the third part. (*Recite settlement creating estate tail and subsequent facts*). And whereas the said A. B. (*tenant in tail*) has determined to bar and extinguish every estate tail to which he is entitled under or by means of the hereinbefore recited indenture of settlement, and also to bar every remainder and reversion

PRECE-  
DENT 38.  
DEED OF  
DISENTAIL.  
Parties.  
Recitals—  
title.  
Of inten-  
tion to bar  
entail.

(a) The Fines and Recoveries Act (3 & 4 Will. IV. c. 74), has not enjoined the observance of any particular form of assurance. The conveyance, under seal of the tenant in tail, whatever form it may assume, will be effectual to bar the estate tail, and unless there be a protector who withholds his consent, the remainders and reversion also, provided it would have been adequate to pass the estate of the tenant in tail, if that estate had been a fee simple. But although no legal necessity requires, yet convenience suggests, the adoption of a certain appropriate form. (2 Hayes' Conv. 161 n.) This point is sometimes of practical importance, for it occasionally happens that a doubt arises whether the vendor be seised in fee simple or fee tail, in which case it will be prudent not to give so much importance to the doubt as to have a formal disentailing deed, yet still to enrol the ordinary fee simple conveyance.

Assurances  
by tenants  
in tail.

A deed of disentail must be enrolled in the Court of Chancery within six calendar months after execution. (3 & 4 Will. IV. c. 74, s. 41). A disentailing assurance by a married woman tenant in tail need not be acknowledged by her previously to the enrolment, but will be effectual if acknowledged by her at any time afterwards. (Re London Dock Company's Act, Ex parte Taverner, 1 Jur. N. S. 814 s. c. on app. Ibid. 1194).

Deed of  
disentail  
must be  
enrolled.  
May be  
acknow-  
ledged at  
any time.

PRECE-  
DENT 38.

DEED OF  
DISENTAIL.

Testatum.

Parcels.

Haben-  
dum.

Discharged  
from estate  
tail and re-  
mainders.

expectant on such estate in tail, and all conditions and collateral limitations in defeazance of the same, and to limit all and singular the said messuages and hereditaments whereof or wherein the said A. B. (*tenant in tail*) is or can be seised or entitled for an estate tail under or by means of the said indenture of settlement, to the use of the said A. B. (*tenant in tail*), his heirs and assigns, for ever. Now this indenture witnesseth that, with the intent and for the purpose aforesaid, and by virtue of the powers and provisions of the statute for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, He, the said A. B. (*tenant in tail*), with the consent of the said C. D., as the protector of the settlement creating the said estate tail (testified by his executing these presents), Doth by these presents grant, convey, and confirm unto the said E. F. (*releasee*), his heirs and assigns, All and singular the messuages, lands, tenements, and hereditaments whereof or wherein he, the said A. B. (*tenant in tail*), is, can, shall, or may be seised or entitled for any estate in tail, whether in possession, reversion, remainder, or expectancy, under or by means of the hereinbefore recited indenture of settlement, and their respective rights, members, and appurtenances. (*Estate clause*). To have and To hold the said messuages, lands, tenements, hereditaments, and premises hereby assured, or intended so to be, and their respective rights, members and appurtenances, unto the said E. F. (*releasee*), his heirs and assigns for ever, discharged from all and every estate in tail of the said A. B. (*tenant in tail*) therein, and from all reversions or remainders expectant thereon, and all collateral limitations in defeazance of the

same, nevertheless, to the use of him the said A. B. (*tenant in tail*), his heirs and assigns, for ever, and to, for and upon no other use, trust, intent, or purpose whatsoever. In witness, &c.

PRECE-  
DENT 38.

DEED OF  
DISENTAIL.

## 39.

*Will of Real and Personal Estate.*

This is the last Will and Testament of me  
of . . . I give unto . . . all my  
pictures, prints and paintings of every sort now in  
or about my residence at . . . aforesaid  
absolutely. And I give unto . . . of  
all my household furniture, wines, liquors, and  
domestic effects of every description in or about  
my dwelling-house at . . . aforesaid, except  
the plate, and also except the said pictures, prints,  
and paintings. And I give unto . . . abso-  
lutely all my books and linen. And I give unto my  
trustees hereinafter named all my plate marked with  
my name, to be held upon trust for . . . to  
belong to him absolutely, when and as he shall attain  
the age of 21 years, but if he die under that age  
then to be upon trust for . . . and  
or such of them as may outlive the said . . . ,  
and equally if more than one so survive. And  
I give the several legacies and annuities herein-  
after mentioned, (that is to say): I give unto . . .  
the sum of £ . . . sterling, pro-  
vided that he attain the age of 21 years, and on  
attaining such age to be paid to him, but the  
same to be in the meantime invested (a) in such

PRECE-  
DENT 39.

WILL OF  
REAL AND  
PERSONAL  
ESTATE.

Gift of  
pictures.

Gift of  
furniture  
and effects.

Gift of  
books and  
linen.

Gift of  
plate upon  
trust.

Gift of  
legacy to  
minor.

(a) Executors should be authorised to invest legacies belonging to infants, instead of paying them into court under the statute 36

Executors  
should be  
authorised

PRECE-  
DENT 39.WILL OF  
REAL AND  
PERSONAL  
ESTATE.Gift of  
legacy and  
forgiveness  
of debt.Gifts of  
legacies.Gift of  
legacy  
upon trusts  
for hus-  
band and  
wife and  
their  
children.to invest  
legacies to  
infants.

stocks, funds, and securities, as hereinafter mentioned, and the income of such investments to be applied by the trustee or trustees of this my will in or towards his maintenance, education, and advancement, until that age; but if the said                      die under the age of 21 years, then I direct the said sum of £                      and the investments to meet the same shall fall into and form part of my residuary personal estate. I give unto                      the sum of £                      sterling, and I forgive him the debt of £                      which is now owing to me by him, together with any arrear of interest thereon which may be due at my decease. I give unto                      of                      the sum of £                      sterling. And I give unto                      now residing with me, the sum of £                      sterling. I give unto my trustees hereinafter constituted, the sum of £                      sterling, upon trust, to invest the same in or upon such stocks, funds, and securities, as the produce of my residuary estate is hereinafter authorised to be invested, and to pay the income thereof unto                      during his life, and after his decease to pay the income thereof to his present wife, if she survive him, for her life, and after the decease of the survivor of the said                      and

Geo. III. c. 52, s. 32. (11 Byth. & Jarm. 991, note by Sweet). Where an infant being entitled to a legacy of £50, the executors under the will invested that sum less the legacy duty in £3 per cent. Consols, and tendered the amount produced by sale of the stock with the interest upon it to the infant, upon her coming of age, and a bill was filed against the executors by the legatee for the amount of the legacy, with £4 per cent. interest, it was held that the executors ought to have paid the legacy into court under the Legacy Duty Act, and a decree was made against the defendants with costs. (*Rimell v. Simpson*, 18 Law J. Ch. 55, V. C. of England).

his wife, then as to the investments from the said £                      sterling, upon trust for the child if only one, or all the children if more than one, of the said                      , who respectively being a son or sons shall attain the age of 21 years or die under that age leaving surviving issue, or being a daughter or daughters shall attain that age or be married, and equally among them if more than one, and his, her, or their respective executors, administrators, or assigns, with power for the trustee or trustees for the time being of this my Will, after the decease of the said                      and                      his surviving wife, in his or their discretion, or in the lifetime of the said

PRECE-  
DENT 39.  
WILL OF  
REAL AND  
PERSONAL  
ESTATE.

with his consent in writing, or with the consent in writing of his surviving wife during her lifetime, to advance any portion not exceeding one half part of the expectant portion of each or any such child during his or her minority for his or her advancement in life, and with power for the said trustee or trustees to apply the income of the presumptive or expectant share of each or any such child during his or her minority for his or her maintenance, education or benefit. And I give unto

of                      £                      sterling. And I give unto the said trustees of this my Will the sum of £                      sterling, upon trust to invest the same in such stocks, funds and securities as hereinbefore referred to, and to hold the said stocks, funds, and securities upon trust for such of the hereinafter named six children of                      , the wife of                      , of                      , namely                      and                      , as respectively being a male or males shall attain the age of 21 years, or die under that age leaving surviving issue, or being a female or females shall

Gift of  
legacy to a  
class.

PRECEDENT 39.

WILL OF  
REAL AND  
PERSONAL  
ESTATE.

Gift of  
legacy to  
minor or  
her  
brothers.

attain that age or be married, and equally among such children if more than one, and his, her, or their executors, administrators, and assigns, and with and under powers of maintenance and advancement, and so that the income that may not be applied for maintenance during minority may accumulate and go with the principal. And I give unto the said trustees the sum of £                      sterling, upon trust to invest the same upon such stocks, funds, and securities as aforesaid, and to belong to                      provided she attain the age of 21 years or previously marry, but if she die under that age without having been married then to be holden upon trust for her brothers

and                      , of                      equally, or their respective executors, administrators, or assigns, but the income of the said investments to be applied for the maintenance, education and benefit of the said

Gift of  
legacy  
upon trusts  
for married  
woman.

during her minority. And I give unto my said trustees the sum of £                      sterling, upon trust to invest the same in such stocks, funds, and securities as aforesaid, and to pay the interest, dividends and income to accrue due during the life of                      , the wife of                      , into her own hands, for her sole use, separate and apart from the said                      and so that the same may not be subject to his debts, contracts, forfeitures, or engagements, and so that the receipts of the said                      or her appointees may be effectual discharges for the same when due, but not before, and from and after the decease of the said                      , then the said trustee or trustees shall stand possessed of the said stocks, funds, and securities, upon trust for such person or persons, for such intents and purposes, and in such manner and form as the said                      by

her last Will and Testament, or any writing in the nature of or purporting to be her last Will and Testament, or any codicil or codicils thereto, notwithstanding her coverture, shall direct or appoint, and in default of and subject to such appointment, then I direct the said last mentioned stocks, funds, and securities to fall into and form part of my residuary personal estate. And I give unto the said trustees the sum of £                      sterling, upon trust to invest the same in such stocks, funds, and securities as aforesaid, and during the joint natural lives of                      , of                      , and of                      his wife, to pay the dividends, interest and income thereof for her sole use, separate and apart from the said                      and so that the same may not be subject to his debts, contracts, forfeitures, or engagements, and so that the receipts of the said                      or her appointees may be effectual discharges for the same when due, but not before, and in case the said                      shall survive the said                      her husband, then the said trust moneys, stocks, funds and securities to be in trust for her absolutely, but if she shall die in the lifetime of the said                      then the same to be in trust for him absolutely. And I forgive unto                      , of                      , the sum of £                      which is now owing from him to me, and any further moneys which may be due or owing to me from him at my decease. And I give unto                      during her life the dividends, interest, and income of the stocks, funds, and securities, in or upon which I direct the said trustee or trustees to invest £                      sterling for such purpose, and after her decease the same to fall into my residuary estate. And I give unto                      and                      clerks to my

PRECEDENT 39.

WILL OF  
REAL AND  
PERSONAL  
ESTATE.

Gift of  
legacy  
upon trusts  
for married  
woman or  
her hus-  
band.

Forgive-  
ness of  
present  
and future  
debts.

Gift of  
dividends  
or income  
for life.

Gift of  
legacies to  
clerks of  
bankers.

**PRECE-  
DENT 39.**  
  
**WILL OF  
REAL AND  
PERSONAL  
ESTATE.**  
  
**Gift of  
legacy  
upon trusts  
for mother  
and daugh-  
ters.**

**Direction  
as to time  
of payment  
of legacies.**

**Gift of  
annuity.**

**Gift of  
annuity to  
married  
woman.**

**Time of  
computa-  
tion of  
annuity  
should be  
stated.**

bankers, Messrs. \_\_\_\_\_ and Co., of \_\_\_\_\_, the sum of £ \_\_\_\_\_ sterling apiece. And I give unto the said trustees the sum of £ \_\_\_\_\_ sterling to be invested in such stocks, funds, and securities as aforesaid, and to pay the dividends, interest, and income thereof unto \_\_\_\_\_, of \_\_\_\_\_, during her life, and after her decease to hold the said stocks, funds and securities upon trust for her daughters \_\_\_\_\_ and \_\_\_\_\_, or their respective executors, administrators, and assigns, equally. And I hereby direct that the several pecuniary legacies bequeathed by this my Will shall be paid, provided for, and appropriated within six calendar months after my decease. And I give unto \_\_\_\_\_ an annuity of £ \_\_\_\_\_ for his life, to be paid quarterly, the first quarterly portion to become due at the end of three calendar months after my decease. (a) And I give unto \_\_\_\_\_ the wife of \_\_\_\_\_ an annuity of £ \_\_\_\_\_ during the joint lives of herself and her said husband to be paid half-yearly, the first half-yearly portion to

(a) According to one learned writer (Christie, 272 n.), where no time is specified for the commencement of an annuity it will not begin to be payable until twelve months from the testator's death, so that according to such theory the first payment of an annuity directed to be paid half-yearly will not take place until eighteen months from the testator's death. This, however, would appear from the authorities to be an incorrect view of the matter. It seems that an annuity commences from the testator's death, although, as in the case of other legacies, payment cannot be demanded from the executors until the end of the first year. (*Houghton v. Franklin*, 1 Sim. & St. 390; *Stamper v. Pickering*, 9 Sim. 176). It is desirable, however, that there should always be an express declaration as to the time from which the annuity is computed. (*Storer v. Prestage*, 3 Mad. 167). The time of computation will necessarily be implied from the period of the first payment of the annuity.



become due at the end of six calendar months after my decease, such annuity to be for the sole use and benefit of the said                      separate and apart from her said husband, and free from his control, and for which the receipt of her or her appointees shall be an effectual discharge, notwithstanding her coverture, and after the decease of either of the said

and                      his wife, then I give the said annuity of £                      unto the survivor of them, for his or her life. And I give, devise, and bequeath, unto

and                      , their heirs, executors, administrators, and assigns, All that my freehold estate situate and being at                      in the county of

, and also all that my freehold estate situate and being at                      in the same county,

• now let on lease to                      to build on; And also all that my leasehold estate situate and being in

in the county of                      held for                      years or thereabouts, and all other my freehold, copyhold, real and leasehold estates, of every nature and description, which may belong to me at my decease or of which I may have any power of beneficial appointment or disposition, (a) and all stocks or funds, and all my moneys out on mortgage, and all my securities for money, and all debts which may be

PRECE-  
DENT 39.

WILL OF  
REAL AND  
PERSONAL  
ESTATE.

Devise and  
bequest of  
real and  
personal  
estate.

(a) In those cases where the instructions refer merely to personalty, it is desirable to extend the provisions of the will to real estate, as the testator may acquire such property before his death.

(2 Prid. Conv. 378 n.) The best plan is to include the real estate under such circumstances in a general devise, together with the personal property, and to direct a sale and declare the same trusts as of the moneys to arise from the conversion of the testator's personal estate. The effect of an immediate and absolute trust for sale is, that the property becomes impressed with the character of personalty. (Van v. Barnett 19 Ves. 102).

Desirable  
to extend  
will to real  
estate.

**PRECEDENT 39.**

**WILL OF  
REAL AND  
PERSONAL  
ESTATE.**

Trusts for  
conversion  
of personal  
estate.

And for  
sale of real  
estate.

Power to  
postpone  
conversion  
should be  
given.

due or owing to me at my decease, and all the residue and remainder of my real and personal estate whatsoever and wheresoever, and of what nature or kind soever, not hereinbefore otherwise disposed of: To Hold the same unto and to the use of the said and , their heirs, executors, administrators and assigns, according to the respective natures and qualities of the same respectively: Nevertheless upon the trusts and for the intents and purposes hereinafter expressed and declared concerning the same respectively (that is to say): Upon trust that the said and or the survivor of them, or the heirs, executors, or administrators of such survivor, or other the trustee or trustees to be appointed in his or their stead, do and shall, when and as he or they may think fit, and without being answerable for any delay in such respect, (a) collect, get in, and convert into money all such of my personal estate as shall not consist of money, or of such stocks, funds and securities as he or they is or are hereinafter authorised to take by way of investment and as he or they may choose to retain by way of investment, and also when and as he or they may think fit, but not otherwise, sell and absolutely dispose of all my said freehold, copyhold, and leasehold estates, and real estate, either altogether in one lot, or by parcels, or in several lots, and either by public auction or private contract, and

(a) It has been remarked in an able quarter, that devises and bequests in trust which impose on the devisees and legatees the duty of converting the property are often defective in not giving to the trustees a discretionary power to postpone the conversion, and in omitting to dispose of the income in the meantime. (Hayes & Jarni. Wills, 246 n.)

with, under, and subject to such special or other provisions and conditions of sale, and in such manner as the said trustee or trustees shall deem most advisable or expedient, and with full power for the said trustee or trustees to reserve a bidding or biddings upon any such sale or sales by auction, and to buy in, rescind, modify, or vary the contract or contracts for sale, and resell the same in or by all or any of the modes or means aforesaid, without being answerable for any loss or expense to be occasioned thereby, and to deal with deposits as he or they shall think fit. And I hereby direct that the said trustee or trustees shall stand seised and possessed of the said real and personal estate, and possessed of the moneys to arise from such sale and conversion of my said real and personal estate as aforesaid, upon trust in the first place, to deduct and retain his and their costs, charges, and expenses of and attendant upon such sale, collection, or conversion, and the execution of the trusts or powers herein contained; And in the next place, pay all my just debts, funeral and testamentary expenses, and the costs of proving this my last Will and Testament, and also any legacy duty which may be or become payable in respect of the legacies and annuities hereinbefore given or bequeathed, and then to pay and satisfy and appropriate investments for meeting or providing for the legacies and annuities by me hereinbefore given, and for any such purpose and for the general objects of this my Will, and lay out or invest the surplus of the moneys to arise by the means aforesaid, or which may form part of my personal estate at my decease and which may remain after or subject to answering the trusts and purposes aforesaid, in or upon the

PRECEDENT 39.

WILL OF  
REAL AND  
PERSONAL  
ESTATE.

Trusts of  
moneys to  
arise from  
sale and  
conversion.

To pay ex-  
penses,  
debts, and  
legacy  
duty.

And then  
provide for  
legacies  
and an-  
nuities.

And invest  
surplus.

**PRECEDENT 39.**

**WILL OF  
REAL AND  
PERSONAL  
ESTATE.**

**Ultimate  
trust of  
real and  
personal  
estate.**

**Devise of trust and mortgage estates.**

### Formal clauses.

**Power for solicitor trustee to make usual charges.**

parliamentary stocks or funds of Great Britain, or real securities in England or Wales, but not in Ireland, as the said trustee or trustees shall in his or their absolute and uncontrolled discretion think fit, and from time to time vary and transpose the said stocks, funds and securities, into or for other stocks, funds and securities of the like nature or kind as the said trustee or trustees in his or their judgment may think proper. And my Will is that the said trustee or trustees shall stand possessed of the said stocks, funds and securities, and the dividends, interest and income of the same, subject to the payment of the said several pecuniary legacies and annuities, and shall stand seised and possessed of all my said real and personal estate which may remain unconverted, upon trust for                      and                      , their heirs, executors, administrators and assigns, equally to be divided between or amongst them as tenants in common. And I give and devise all estates that may be vested in me upon any trust or by way of mortgage unto and to the use of the said                      and                      , their heirs, executors, administrators and assigns, upon the trusts and with the powers and subject to the equities of the same respectively, which may be subsisting or capable of taking effect or being exercised of and concerning the same.

(Declaration that receipts shall be sufficient discharges.  
Power to compound debts and refer to arbitration.  
Appointment of new trustees.)

Provided also, and my Will further is that it shall be lawful for the said                      , notwithstanding his being a trustee of this my Will, to make all usual and accustomed charges as an attorney or solicitor in or about the execution of the trusts of this my Will, or in any wise relating

thereto or to my real and personal estate. (a) And lastly, I hereby constitute and appoint the said \_\_\_\_\_ and \_\_\_\_\_ to be the executors of this my Will. And I hereby revoke every or any other Will or testamentary disposition by me heretofore made, and declare this writing to be my last Will and Testament. (b) In witness, &c.

PRECEDENT 39.

WILL OF REAL AND PERSONAL ESTATE.

Appointment of executors.

Revocation of any other will.

## 40.

*Will of Freehold, Leasehold and Personal Estate, and  
Conferring Power to Sell Copyholds.*

This is the last Will and Testament of Me \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_. I give to my son \_\_\_\_\_ my watch and chain, and my Hume's History of England. I give to my daughter \_\_\_\_\_ my pianoforte. I give to my daughter \_\_\_\_\_ my Johnson's edition of the

PRECEDENT 40.

WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.  
Specific legacies.

Where solicitor appointed executor or trustee.

(a) Where the testator is desirous of appointing a solicitor one of his executors or trustees this clause should be inserted, as otherwise the executors or trustees will not be permitted to make any charge for services rendered in relation to the trust estate. (Christie Pr. of Wills, 261 n.)

Nature and importance of the revocation clause.

(b) Any paper duly executed, by means of which the testator disposes of the whole of his property, is a complete revocation of all previous wills or testamentary documents. Still a clause of revocation is useful and important in those instances where the intention to make a new will is not so clearly indicated as to preclude attempts to adopt wholly or partially the contents of former wills as part of the testator's dispositions, since a will may be composed of several papers of different dates, each purporting to be the will, or even the 'last will,' of the testator, where they are capable of standing together. An express clause of revocation in the last paper of course prevents any such question from being raised. (Hayes & Jarm. Wills, 266 n.) A minor advantage arising from the clause of revocation is, that it is a formal and solemn conclusion of what is supposed to be the testator's last document on earth, in intention, if not, as often is the case, also in actual fact.

PRECE-  
DENT 40.

WILL OF  
FREEHOLD,  
COPYHOLD,  
AND PER-  
SONAL  
ESTATE.

Poets. I give to my wife the use and enjoyment during her life of all my household furniture, plate, linen, china, wine, liquors, pictures, prints, paintings, and domestic effects of every description not hereinbefore otherwise disposed of, and after her decease I give the said furniture and other effects to my four children

and , equally, but if either of my said children shall die under the age of 21 years without leaving surviving issue, then I give the share of either of the said children so dying unto the other or others of them. Provided always, and I hereby declare that it shall be lawful for my said wife, during her lifetime, to give or distribute any part of the said furniture and effects unto or among my said children, in shares as nearly equal as conveniently may be.

Gift of  
annuity to  
wife.

And I give unto my said wife an annuity of eighty pounds during her life, in lieu of dower or thirds, to be payable on the four usual quarterly days in the year, the first of such payments to be made on the first of such days as shall happen next after my decease. And I hereby direct, authorise, and empower my said wife, , of , and

Power to  
sell copy-  
holds.

, of , or the survivors or survivor of them, or the heirs of such survivor, as soon as conveniently may be after my decease, but without being answerable for any delay that may occur in such respect, to sell (a) my copyhold dwelling-house,

Power in  
will to sell  
copyholds.

(a) Where a testator intends that his copyholds shall be sold immediately on his death, he should not devise the same to his trustees, but give them a power or an authority to sell the property, which will render their admittance unnecessary. (Holder d. Sulyard v. Preston, 2 Wils. 400). The power will be exercised by bargain and sale without enrolment; but where an immediate sale of the copyhold property is not contemplated, then it will be better to

garden, and premises, situate at                      aforesaid,  
 now in my own occupation, and other my copyhold  
 estate and hereditaments whatsoever and where-  
 soever, and stand possessed of the moneys to arise  
 from such sale upon such trusts as are hereinafter  
 declared. And I hereby direct that it shall be lawful  
 for my said trustee or trustees, if he or they, in his,  
 her, or their discretion shall think proper, to offer the  
 said dwelling-house, garden, and premises, at  
 aforesaid, now in my own occupation, to my son

PRECE-  
 DENT 40.

WILL OF  
 FREEHOLD,  
 COPYHOLD,  
 AND PER-  
 SONAL  
 ESTATE.

Offer of  
 house may  
 be made to  
 son.

, at a fair valuation, but without any  
 right of pre-emption on the part of my said son. And  
 I give, devise, and bequeath unto my said wife  
 , and the said                      and                      ,

Devise and  
 bequest of  
 real and  
 personal  
 estate.

their heirs, executors, administrators and assigns, All  
 my freehold and leasehold estates of every description  
 which may belong to me at my decease, or of which  
 I may have any power of beneficial appointment or  
 disposition; and all my stocks or funds, and all my  
 shares in the                      and                      ; and all  
 moneys out on mortgage belonging to me, and all my  
 securities for money, and all debts which may be due  
 or owing to me at my decease; and all the residue of  
 my personal estate, whatsoever and wheresoever, and  
 of what nature or kind soever, not hereinbefore other-  
 wise disposed of, To hold the same unto and to the  
 use of my said wife and the said                      and  
 , their heirs, executors, administrators  
 and assigns, according to the natures and qualities of

devise the same to the trustees, because in the event of any delay  
 to sell the land, the lord of the manor, after a certain number of  
 proclamations, would be entitled to require the heir to be admitted,  
 or in default of such admittance to seize the land quousque for want  
 of a tenant. (2 Prid. Conv. 391 n.)

Where  
 devise to  
 trustees  
 better.

PRICE-  
DENT 40.

**WILL OF  
FREEHOLD,  
COPYHOLD,  
AND PER-  
SONAL  
ESTATE.**

**Trusts for  
conversion  
of personal  
estate.**

**And sale of  
freeholds  
and lease-  
holds.**

**Trusts of moneys to arise from sale or conversion.**

the same respectively: Nevertheless, upon trust that my said wife, and the said \_\_\_\_\_ and \_\_\_\_\_, or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, or other the trustee or trustees to be appointed in his, her, or their stead do and shall, when and as he, she, or they may think fit, and without being answerable for any delay in such respect, collect, get in, and convert into money all such of my personal estate as shall not consist of money, bank or other stock, or securities for money, or of such shares and other securities as are hereinafter authorised to be retained by way of investment, and as he, she, or they may choose so to retain; and also when and as he, she, or they may think fit, but not otherwise, sell and absolutely dispose of all my said freehold and leasehold estates. And I hereby direct, that the said trustee or trustees shall stand seised and possessed of the said freehold and leasehold estates, and personal estate, and possessed of the moneys to arise from the sale hereinbefore directed to be made of my copyhold estates, and of the moneys to arise from such sale and conversion of my said freehold and leasehold estates as aforesaid, upon trust in the first place, to deduct and retain his, her, and their costs, charges, and expenses of and attendant upon such sale, collection and conversion, and the execution of the trusts and powers herein contained; And in the next place, pay all my just debts, funeral and testamentary expenses, and lay out and invest the surplus of the moneys to arise by the means aforesaid, or which may form part of my personal estate at my decease, and which may remain after and subject to answering the trusts and purposes aforesaid, in or upon the



parliamentary stocks or funds of Great Britain, or real securities in England or Wales, but not in Ireland, as the said trustee or trustees shall in his, her, or their absolute and uncontrolled discretion think fit, and from time to time vary or transpose the said stocks, funds, and securities into or for other stocks, funds and securities of the like nature or kind, as the said trustee or trustees, in his, her, or their judgment may think proper. And my Will is, that the said trustee or trustees shall stand possessed of the said stocks, funds, and securities, and the dividends, interest, and income of the same, subject to the payment of the said annuity, and shall stand seised and possessed of all my said freehold and leasehold estates and personal estate which may remain unconverted, upon trust for my said children and

PRECE-  
DENT 40.

WILL OF  
FREEHOLD,  
COPYHOLD,  
AND PER-  
SONAL  
ESTATE.

Ulterior  
trusts in  
favour of  
children.

, their heirs, executors, administrators and assigns, equally to be divided between or amongst them as tenants in common; but in case any or either of my said children shall die under the age of 21 years without leaving surviving issue, then I direct that his or her share shall go and belong to the survivors or survivor, other or others of my said children, in like manner as his or her original share. Provided always, and I hereby declare, that it shall be lawful for my said trustee or trustees, if he, she, or they, in his, her, or their judgment shall think proper, to retain my said shares in the

Power to  
retain  
shares.

and or any other shares or securities which may form part of my personal estate at my decease, in their then state of investment, so long as he, she, or they may think proper, and to pay any calls which may be made in respect of any of the said shares, without being answerable or accountable

PRECE-  
DENT 40.

WILL OF  
FREEHOLD,  
COPYHOLD,  
AND PER-  
SONAL  
ESTATE.  
Devise of  
trust and  
mortgage  
estates.

That re-  
ceipts of  
trustees  
shall be  
good dis-  
charges.

Direction  
to appoint  
particular  
trustees.

Clause of  
exonera-  
tion.

for any loss or diminution in respect of any such investments. And I give and devise all estates that may be vested in me upon any trusts or by way of mortgage unto and to the use of my said wife and the said                      and                      , their heirs, executors, administrators, and assigns, upon the trusts, and with the powers and subject to the equities of the same respectively, which may be subsisting or capable of taking effect, or being exercised of and concerning the same. And I direct that the person or persons by whom all or any of the moneys for the time being subject to the trusts or provisions of this my Will, may be paid to the trustee or trustees for the time being of this my Will, shall not be bound to see to the application or be answerable for the misapplication or non-application of the same money or any part thereof, by him, her, or them, and that every receipt which shall be given for the said money or any part thereof, or the interest, dividends, or income of the said money or any part thereof by the person or persons who for the time being shall be the acting trustee or trustees under this my Will, shall be an effectual discharge for the money therein expressed to have been received. And I hereby further direct, that if the said                      shall die in my lifetime or after my decease and before the trusts of this my Will shall have been fully performed, then and in such case                      , of                      , shall be appointed a trustee of this my Will in the place of the said                      ; And that in case the said                      shall die in my lifetime or after my decease and before the trusts of this my Will shall be fully performed, then and in that case                      , of                      , shall be appointed a trustee of this my Will in the place of the said                      . And

I exempt every trustee of my Will from losses occurring without his or her own wilful default, and authorise them to retain and allow to each other all expenses incurred in the execution of the trusts of this my will or in any way relating thereto. And lastly, I hereby constitute and appoint my said wife and the said and

PRECEDENT 40.

WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE. Appointment of executors.

to be the executors of this my Will, and request the said and to accept a legacy of £10 10s. each, as a small acknowledgment of their trouble in acting in the execution of the trusts of this my Will; and I desire to express the entire confidence which I have in their judgment. And I hereby revoke every or any other will or testamentary disposition by me heretofore made, and declare this writing to be my last Will and Testament. (a) In witness, &c.

Gift to them of legacies.

Revocation clause.

#### 41.

*Will containing Specific Bequest to Wife, Gifts of Annuities to Daughters, and Gifts of Personalty and Devise of Realty to Sons.*

This is the last Will and Testament of me of , in the county of . I give and bequeath to my wife All my

PRECEDENT 41.

WILL OF PERSONALTY AND REALTY.

Bequest to wife of wines and stores.

(a) The mode of sale and powers to apply income for maintenance, to compound debts and refer to arbitration, and to appoint new trustees other than the special trustees indicated, are left to be conferred by the Trustees and Mortgagees Act, 23 & 24 Vict. c. 145.

It would seem, however, that when a will is to operate on property in the colonies, the clauses as to trustees' receipts, power to appoint new trustees, and executors' powers to arrange and compromise, should be inserted, as it is doubtful whether the statutory provisions of the 23 & 24 Vict. c. 145, apply to the colonies. (4 Dav. Conv. 297 n.)

Will of property in the colonies.

PRECEDENT 41.

WILL OF  
PERSON-  
ALTY AND  
REALTY.

Also use  
for life of  
furniture  
and effects.

wines, liquors, and other stores of a consumable nature, for her own absolute benefit. And I give and bequeath to my said wife, the use and enjoyment, during her widowhood, of all my household furniture and effects, and other household goods, not of a consumable nature, plate, linen, books, pictures, carriages, carriage-horses and harness, she, my said wife, at her own expense, insuring the said furniture and effects, and keeping the same insured against loss or damage by fire, in the full value thereof, and keeping the same in good order and condition, reasonable wear and tear excepted, but I exempt my executors and trustees hereinafter named from seeing to such insurance and repairs and from liability in the event of such insurance and repairs being omitted or neglected; And from and after the death or remarriage of my said wife, then I direct that the said household furniture and other effects so given to my said wife during her widowhood as aforesaid, shall fall into and form part of my residuary personal estate. And I give unto my said wife an annuity of

Gift to wife  
of annuity  
during  
widow-  
hood, and  
thereout to  
maintain  
children.

£ during her widowhood, to commence as from the day of my decease, and to be payable quarterly, and to be accepted by her in lieu of the provision made for her by our marriage settlement, and upon trust and to the intent that she shall out and by means of such annuity maintain such of my children as shall for the time being be under age, and in case my said wife shall marry again during the minority of any of my children, then I give and bequeath unto my friends , of , and , of , an annuity of £ for each of my children who shall then be under age, to commence as from the day of the remarriage of my said

On re-  
marriage  
gift to  
trustees of  
annuity  
during mi-  
nority of  
each child.

wife, and to continue during the minority of each such child and to become payable quarterly, upon trust that my said trustee or trustees do and shall apply either the whole or such part as may be necessary of each of the said annuities of £

for the maintenance and benefit of the respective child during whose minority the same shall be held, and upon trust that my said trustee or trustees shall stand possessed of the unapplied part of each of the said annuities of £ upon the same trusts as are herein declared, concerning the residue of my personal estate. And I give unto my daughter

, wife of , an annuity of £

during her life for her separate use without power of anticipation, such annuity to commence as from the day of my decease, and to be payable quarterly, and in case the said shall survive the

said , his wife, then I give unto him, the said , an annuity of £ during his life,

to commence on the day of the death of his said wife, and to be payable quarterly. And I give unto my daughter , wife of , an

annuity of £ during her life for her separate use without power of anticipation, such annuity to commence on the day of my decease, and to be payable by twelve equal monthly instalments of £

each. And I give unto my daughter an annuity of £ during her life for her separate

use without power of anticipation, such annuity to commence on the day of my decease, and to be payable quarterly. And I give and bequeath unto the said and (whom I hereby

constitute trustees of this my Will) all my capital invested in the firm of and of

PRECEDENT 41.

WILL OF PERSONALTY AND REALTY.

Gift of annuity to daughter and then to her husband.

Gift to another daughter of annuity payable monthly.

Gift of annuity to another daughter payable quarterly.

Bequest to trustees of capital in firm and other personal estate.

PRECE-  
DENT 41.

WILL OF  
PERSON-  
ALTY AND  
REALTY.

Upon trust  
to continue  
in present  
invest-  
ment.

And out of  
personal  
estate, pay  
debts and  
annuities.

Gift of  
residue to  
sons.

which I am one of the partners, and all my money in the funds or out on mortgage or other security, or which may be at my bankers, or in my own possession at the time of my decease, and all the residue of my personal estate not hereinbefore otherwise disposed of; Upon trust that my said trustee or trustees do and shall, if he or they so think proper, continue the said capital in the business of the said firm, upon such terms as to security, rate of interest, or profit, as my said trustee or trustees may think advisable, until my youngest son shall attain 21; And upon further trust that my said trustee or trustees do and shall, if he or they in his or their discretion shall think proper, allow any other part or parts of my personal estate to remain in the state of investment in which it may be at the time of my decease; And upon further trust that my said trustee or trustees do and shall, from and out of my personal estate, pay my just debts, funeral and testamentary expenses, and stand possessed of the residue of such personal estate upon the trusts hereinafter expressed, that is to say: upon trust that my said trustee or trustees do and shall, from and out of the income of my said residuary personal estate, pay the several annuities hereinbefore bequeathed, and, subject to the trusts aforesaid, my said trustee or trustees shall stand possessed of my said residuary personal estate upon trust for my four sons, , , and , equally as tenants in common, but in case any or either of my said sons shall die under the age of 21 years and without issue then I give the share or shares as well original as accruing of such one or more of my said sons who shall so die under the age of 21 years and without issue, unto the others

or other of my said sons for his and their own use and benefit, and if more than one equally as tenants in common. And I hereby authorise and empower my said trustee or trustees, with the consent of my four sons, or such one or more of them as may become entitled to my said residuary personal estate as aforesaid, to purchase government annuities for all, any, or either of the annuitants hereinbefore named, and in lieu of the annuity or annuities given by this my Will, and thenceforth such annuity or annuities shall cease and determine. And I also empower my said trustee or trustees, with the like consent of my four sons, or such one or more of them as aforesaid, to set apart and appropriate any part or parts of my said personal estate as a fund for the purpose of meeting all or any of the annuities given by this my Will. And I give and devise unto my said wife all that messuage or dwelling-house situate at

PRECE-  
DENT 41.

WILL OF  
PERSON-  
ALTY AND  
REALTY.

Power to  
purchase  
govern-  
ment  
annuities.

Or to set  
apart  
personal  
estate.

Devise of  
dwelling-  
house to  
wife for  
life.

aforesaid, called \_\_\_\_\_, now in my own occupation, with the outbuildings, gardens, and appurtenances, To hold the same unto my said wife during her widowhood, as a residence for herself and such of my children who may be under age, or of age but unmarried, she, my said wife, keeping the premises in repair, and insuring the same against loss by fire to the full value of the buildings thereon. And I give and devise unto my said four sons \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,

Devise of  
real estate  
to sons.

\_\_\_\_\_ and \_\_\_\_\_, All and singular my messuages, lands, tenements, and hereditaments, situate and being at \_\_\_\_\_; and also the said messuage and hereditaments so devised to my said wife for her widowhood, as aforesaid; and all the residue of my real estate: To hold the same unto them my four sons, their heirs and assigns, equally, as tenants in

PRECE-  
DENT 41.

WILL OF  
PERSON-  
ALTY AND  
REALTY.

Real estate  
charged  
with an-  
nuities.

Powers of  
distress  
given to  
annuitants.

Appoint-  
ment of  
executors.

Revocation  
clause.

common ; but in case any or either of my said four sons shall die under the age of 21 years without issue, then I give and devise the share or shares, as well original as accruing, of each one or more of my said sons so dying, unto the other or others of them and his or their heirs and assigns, and equally among them if more than one as tenants in common. And I hereby charge and make chargeable all and singular my real estates hereinbefore devised (but as to the said messuage and premises called only from and after the death or remarriage of my said wife) with the payment of the several annuities hereinbefore bequeathed. And I hereby give and grant unto each of the annuitants hereinbefore named the same or the like remedies and powers of distress and entry, and for the sale of such distress, as if the said several annuities were rents reserved on leases for years. And lastly, I hereby constitute and appoint my said wife during her widowhood, and the said                      and                      to be the executors of this my Will. And I hereby revoke every or any other will or testamentary disposition by me heretofore made, and declare this writing to be my last Will and Testament. (a) In witness, &c.

(a) The investment clause and the powers to compound debts and refer to arbitration, to give receipts, and for the change and indemnity of trustees, are left to be supplied by the statutes 22 & 23 Vict. c. 85; 23 & 24 Vict. c. 38; and 23 & 24 Vict. c. 145.



## 42.

*Articles of Partnership.*

Articles of Agreement made &c. between A. B. of  
&c. of the one part, and C. D. of &c. of the other  
part. (a)

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

Whereas the said A. B. is now carrying on the  
trade or business of a                      at                      ,  
under the name or style of                      . And  
whereas the said A. B. and C. D. are desirous of  
becoming partners in the said trade or business  
of a                      for the term and subject to the  
stipulations hereinafter expressed. Now, therefore,  
these presents witness that, in consideration of the  
mutual trust and confidence which the said parties  
respectively repose in each other, and also in con-  
sideration of the sum of £                      sterling, paid and to  
be paid by the said C. D. to the said A. B. as the  
purchase-money for one-half share of the said trade  
or business as follows, that is to say, the sum of  
£                      , at or immediately before the execution of  
these presents, and the further sum of £                      at the  
expiration of                      calendar months, from the date  
hereof, the receipt of which said sum of £                      now

Heading  
and  
parties.  
Recital of  
trade.

Of inten-  
tion to  
become  
partners.

Testatum  
and con-  
sideration.

(a) Partnership deeds do not in general contain any recitals  
beyond an introductory one to the effect of the intention of the  
parties. Where, however, any past transactions have taken place  
or an old partnership has terminated, it may be desirable to have  
recitals showing the exact position of the parties with reference to  
their previous dealings with one another.

No recitals  
in partner-  
ship deeds.

Though partnership deeds are all prepared on the same general  
plan, yet in their clauses and stipulations they vary materially with  
reference to the particular trade or business and the custom and  
mode of conducting the same.

All pre-  
pared on  
same  
general  
plan.

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

paid, the said A. B. doth hereby acknowledge, and therefrom discharge the said C. D., his executors and administrators; each of them, the said A. B. and C. D., for himself, his heirs, executors, and administrators, hereby covenants with the other of them, his executors and administrators, in manner following (that is to say):—

Agreement  
to become  
partners.

1. That the said A. B. and C. D. shall henceforth be and continue partners together in the trade or business of \_\_\_\_\_ as aforesaid, for the full term of \_\_\_\_\_ years, to be computed from the day of the date of these presents, if the said partners shall so long live (a), subject to the provisions hereinafter contained, for determining the said partnership.

Style of  
firm and  
place of  
business.

2. That the said business shall be carried on under the firm of \_\_\_\_\_, at \_\_\_\_\_ aforesaid, or in such other place of business as the said partners shall from time to time mutually agree upon.

Profits to  
be equally  
divided.

3. That the said partners shall be entitled to the profits of the said business in equal proportions, and that all losses happening in the course of the said business shall be borne by them in the same proportions, unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.

Partner  
advancing  
money to  
receive  
interest.

4. That if either of the said partners shall at any time or times advance or pay to or for the use or

Term of  
partner-  
ship should  
be stated.

(a) It should always be stated whether the term is to be absolute or determinable on the death of all or any of the partners, as, in the absence of a stipulation to the contrary, a partnership will be dissolved by the death of any of the parties. (Crawford v. Hamilton, 3 Mad. 251, see p. 254, 1 Sw. 508).

benefit of the said partnership any sum or sums of money (but as to the said C. D. in addition to the said sum of £        paid and to be paid by him as aforesaid), then the partner so advancing such sum or sums of money, shall be repaid and allowed interest thereon after the rate of £        per cent. per annum, before any division of profits shall be made.

PRECEDENT 42.  
PARTNERSHIP DEED.

5. That all cheques, bills of exchange, and promissory notes, made, drawn, endorsed, and accepted by either of the said partners on the joint account of the said partnership, shall be made, drawn, endorsed, and accepted in the name of the said partnership firm.

Negotiable instruments.

6. That the said A. B. shall be at liberty, from time to time, to draw out of the said business any sum or sums, not exceeding the sum of £        per month, for his own use, and the said C. D. shall also be at liberty to draw out of the said business any sum or sums of money, not exceeding the sum of £        per month, for his own use, such sums to be duly accounted for by them respectively on every settlement of accounts and division of the profits of the said business. Provided always, and it is hereby declared and agreed that, in case of default on the part of the said C. D. in payment of the said second sum of £       , he shall not be at liberty to draw any such monthly allowance as aforesaid, until after the payment of the said second sum of £       .

Monthly allowances to partners.

7. That as well the rent as all other taxes and outgoings which shall become payable in respect of the messuage wherein the said business shall be carried on, the costs of insuring the stock-in-trade and fixtures belonging to the said partnership from loss or damage by fire, the expense of providing coals, gas, and candles, and of paying clerks, porters,

Expenses of business to be paid out of profits.

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

and servants to be employed in the said business, and of travelling and all other disbursements and expenses which may be incurred by the said partners respectively in the course of the said business, shall be paid and borne out of the profits of the said business.

Engage-  
ment of  
apprentice,  
clerk, or  
servant.

8. That no apprentice, clerk, or servant shall be engaged or employed in or about the said business by either of the said partners without the consent of the other of them.

Premiums  
and ap-  
prentice  
fees.

9. That all premiums and apprentice fees to be paid with any apprentice or other person to be received into the said business, shall be considered as part of the profits of the said business and divided accordingly.

Accounts  
to be made  
up yearly.

10. That as soon as conveniently may be after the day of in every year, during the said partnership, the said partners shall make a full and correct account, in writing, of all the credits and effects due, owing, and belonging to the said partnership, and all debts due or owing by or from the said partnership, according to the usual mode of making out such accounts among such as afore-said, and cause such accounts to be written in two books, to be respectively subscribed by the said partners, and after such subscription each of the said partners shall take one of the said books and be concluded thereby, unless some manifest error shall appear therein within the space of calendar months next after the making up of such accounts, and be notified by either of the said partners unto the other of them within that time, and in such case only the said error shall be rectified, and that on the making up of every such yearly account all interest

which shall become due to the said A. B. and C. D. for such sum or sums of money as they shall respectively advance and bring into the said partnership as aforesaid, shall, in the first place, be deducted, and the residue of the clear profits of the said business which shall have accrued or been gained in the preceding year shall be divided amongst the said partners in the proportions aforesaid.

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

11. That the said partners respectively shall keep or cause to be kept proper accounts in writing of all moneys received and paid, of all contracts entered into and all business transacted on account of the said partnership, and all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, and which accounts, together with all deeds, securities for money, and papers belonging to the said partnership, shall be kept at the place where the said business shall be carried on and not elsewhere, and shall at all reasonable times be open to the inspection of both the said partners.

Proper  
books of  
account to  
be kept.

12. That the said partners shall be true and just to each other in all their contracts, sales, reckonings, receipts, payments, and dealings, and shall at all times, during the continuance of the said partnership, diligently and faithfully employ themselves respectively in the conduct and management of the said business and the concerns of the said partnership.

Partners  
shall be  
true and  
just to one  
another.

13. That neither of the said partners shall transact any business or enter into any contract or agreement with, or give credit to any person or persons, or lend or advance any sum or sums of money out of the said partnership funds to any person or persons, after he shall be requested by the other of the said partners

Mode of  
transacting  
business.

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

not to do the same; and that neither of the said partners, without the consent of the other of them, shall compound, release, or discharge any debt or duty which shall be due or owing to the said partnership without receiving the full amount thereof; and also that neither of the said partners without the consent of the other of them, shall draw or accept any bill or promissory note, nor contract any debt on account of the said partnership, except in the usual and regular course of the business of the partnership and for the benefit thereof.

Partners  
not to be-  
come bail  
or surety,  
nor assign  
share.

14. That neither of the said partners shall become bail or surety for any person or persons, and that neither of the said partners shall assign over his share or interest in the said partnership, nor carry on either separately or in partnership with any other person or persons, the business of such as aforesaid, nor knowingly or willingly do, commit, or permit any act, matter, or thing whatsoever, by which or by means of which the said partnership moneys or effects shall be seized, attached, extended, or taken in execution.

Partner-  
ship may  
be dis-  
solved in  
certain  
events.

15. That if (contrary to the several agreements hereinbefore contained) either of the said partners shall neglect or refuse to attend to the business of the said partnership, or if either of the said partners shall wilfully neglect or refuse to keep proper and just accounts, or shall transact business or enter into contracts with or make advances or give credit to any person or persons after he shall be requested not to do the same, or if (contrary to the said agreements) either of the said partners shall compound or release any debt, or draw or accept any bill or note, or contract any debt on account of the said partnership,

except in the usual and regular course of the business of the said partnership and for the benefit thereof, or shall become bail or surety for any person or persons, or shall assign his share or interest in the said partnership, or if either of them, the said A. B. and C. D., shall carry on, either separately or in partnership with any other person or persons, the trade or business of such                      as aforesaid, or shall become bankrupt, or shall do, commit, or permit to be done, any act, matter, or thing whatsoever, by which or by means of which the said partnership moneys or effects may be seized, attached, extended, or taken in execution, then and in any of the said cases either of the said partners, if he shall so think fit, shall be at liberty to dissolve the said partnership by giving to the partner who shall offend in any of the particulars aforesaid, or leaving at the place where he shall usually carry on the business a notice in writing declaring the said partnership to be dissolved and determined, and the said partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for the purpose, absolutely cease and determine accordingly, without prejudice nevertheless to the remedies of the respective partners for the breach or non-performance of all or any of the covenants or conditions contained in these presents, at any time or times before the determination of the said partnership, and the partner to whom the said notice shall be given shall be considered as quitting the said business for the benefit of the partner who shall give the said notice, and both the said partners shall join in causing a proper notice of the dissolution of the said partnership to be inserted in the 'London Gazette.'

PRECE-  
DENT 42.

PARTNER-  
SHIP DEED.

PRECE-  
DENT 42.  
  
PARTNER-  
SHIP DEED.  
  
Course to  
be pursued  
on death of  
either of  
the part-  
ners.

16. That in case either of the said partners shall die before the expiration of the term of the said partnership, then the surviving partner shall, within the space of            calendar months next after the decease of the partner so dying, settle and adjust with the representative or representatives of the deceased partner, all accounts, matters, and things relating to the said partnership; and if the surviving partner shall be desirous of purchasing the share of the deceased partner, of and in the property, credits, and effects of the said partnership, then the value thereof shall be ascertained by two indifferent persons, one to be chosen by the surviving partner, and the other by the representative or representatives of the deceased partner, and the surviving partner shall thereupon become the purchaser of the said share at such valuation, and shall enter into a bond in a sufficient penalty for securing to the representative or representatives of the deceased partner the amount of such valuation by three equal instalments, at the respective periods of            and            calendar months next after the decease of the partner who shall so die as aforesaid, with interest at the rate of £5 per cent. per annum, from the time of such decease; and also a bond for indemnifying the estate and effects of the deceased partner against the debts and demands due or owing by or from the said partnership, on having a proper assignment or assurance executed for vesting in the surviving partner the share of the deceased partner, and enabling such surviving partner to collect and get in all the credits and effects due, owing, and belonging to the said partnership; but in case at the decease of either of the said partners as aforesaid, the surviving partner shall decline to purchase the



share of the deceased partner in manner aforesaid, then the credits and effects of the said partnership shall be collected in or converted into money, and out of the money arising therefrom all the debts due from the said partnership shall be discharged, and the surplus or residue (if any) shall be divided between the said surviving partner and the representative or representatives of the deceased partner, in the proportions hereinbefore mentioned.

PRECEDENT 42.  
PARTNERSHIP DEED.

17. That in case of the determination of the said partnership by either of the said partners by notice as aforesaid, the partner giving the said notice shall have the like option of purchasing the share of the partner to whom the notice shall be given as is hereby given to the surviving partner upon the decease of either of the said partners, and upon the same terms in all respects, and if such partner shall decline to purchase the share upon the terms aforesaid, then the said partnership accounts and affairs shall be adjusted and wound up in the same manner as is hereinbefore provided in the event of the death of either of the said partners and the surviving partner declining to purchase the share of the deceased partner. (a) In witness, &c.

Where partner-ship determined by notice.

## 43.

*Grant of Annuity for term of Life. (b)*

This Indenture, made &c., between A. B., of &c. (grantor), of the first part, C. D., of &c. (grantee), of

PRECEDENT 43.  
GRANT OF ANNUITY.  
Parties.

(a) Here should be added, where considered desirable, the clause for reference of disputes to arbitration.

(b) Formerly it was necessary to enrol a memorial of every annuity deed in Chancery within thirty days after its execution,

Where necessary

PRECE-  
DENT 43.

GRANT OF  
ANNUITY.

Recital of  
contract.

First tes-  
tatum.

Grant of  
annuity.

Parcels.  
Haben-  
dum.

to register  
annuity.

Annuity to  
include  
annual  
premiums.

the second part, and E. F., of &c. (*trustee*), of the third part. Whereas the said A. B. has contracted with the said C. D. for the sale to him of an annuity or yearly rent-charge of £        for his life, to be secured in manner hereinafter expressed for the price of £        . Now this Indenture witnesseth that in pursuance of the said contract, and in consideration of the sum of £        sterling to the said A. B. now truly paid by the said C. D. (the receipt whereof is hereby acknowledged), He the said A. B. doth by these presents grant unto the said C. D. and his assigns one annuity or clear yearly rent-charge of £        , (a) to be paid during the life of the said C. D., and to commence from the date of these presents, and to be charged upon and yearly issuing and payable out of All that, &c. (*parcels*) And &c. (*General Words for Farms*). To Have and to Hold the said annuity or yearly rent-charge hereby granted, or intended so to be, unto the said C. D.

under the provisions of the statutes made in that behalf (53 Geo. III. c. 141; 3 Geo. IV. c. 92, and 7 Geo. IV. c. 75). A form of memorial was prescribed, which it was necessary to pursue accurately, or the annuity might be set aside. This requirement, which it was supposed would materially benefit grantors, led to a great deal of litigation, but these Acts of Parliament are now repealed. (17 & 18 Vict. c. 90). Where, however, the grant of an annuity is intended to affect lands as against purchasers, mortgagees, or creditors (18 & 19 Vict. c. 15, s. 12), then, unless granted by marriage settlement or will (s. 14), a memorandum containing the name and address of the grantor, and the date of the deed, and amount of the annuity, must be left for entry with the senior master of the Court of Common Pleas.

(a) Sometimes the annuity is calculated so as to include the annual premiums for the assurance of the grantor's life, and the grantor may covenant for the payment of any additional premiums. (Hayes' Conc. Conv. 708 n.)

and his assigns, during his life to be paid by equal quarterly portions on the            day of            , the            day of            , the            day of            , and the            day of            in every year, without any deduction or abatement on any account whatsoever, the first quarterly payment of the said annuity or yearly rent-charge to be made on the            day of            now next ensuing, if the said C. D. shall be then living; and if the said C. D. shall die on any other day than one of the said quarterly days of payment then a proportional part of the said annuity or yearly rent-charge to be paid after his death for the part of the current year up to and including the day of his death. (*Powers of Distress and Entry.*) And this Indenture further witnesseth that in further pursuance of the said contract and for the consideration aforesaid, He, the said A. B., on the nomination of the said C. D. (testified by his executing these presents), Doth by these presents grant and demise unto the said E. F., his executors, administrators and assigns, All and singular the            and premises hereinbefore expressed to be hereby charged with the said annuity or yearly rent-charge of £            . To Have and to Hold the said            and premises hereby demised, or intended so to be, unto the said E. F., his executors, administrators and assigns, henceforth during the term of 99 years, nevertheless upon the trusts hereinafter expressed (that is to say): (*Trusts for securing Annuity. Covenants for Title. Power to repurchase*). In witness, &c.

PRECE-  
DENT 43.GRANT OF  
ANNUITY.Powers of  
distress  
and entry.  
Second tes-  
tatum.

Demise.

Haben-  
dum.Trusts,  
covenants,  
and power  
to repur-  
chase.

## 44.

*Assignment of Annuity, Warrant of Attorney and Judgment, and of Term for Securing Annuity.*PRECE-  
DENT 44.ASSIGN-  
MENT OF  
ANNUITY.  
Parties.Recitals—  
of grant of  
annuity.Of judg-  
ment  
entered up.Of due pay-  
ment of  
annuity.Of contract  
for pur-  
chase.First tes-  
tatum.Grantor  
should be  
made a  
party or  
have notice  
of assign-  
ment.

This Indenture, made &c., between A. B., of &c. (*grantee*), of the first part, C. D., of &c. (*old trustee*), of the second part, E. F., of &c. (*grantor*), of the third part, (a) G. H., of &c. (*purchaser*), of the fourth part, and X. Y., of &c. (*new trustee*), of the fifth part. (*Recite grant of annuity*). And whereas the said annuity or yearly rent-charge was further secured by a judgment entered up in pursuance of a warrant of attorney from the said E. F. (*grantor*) for that purpose. And whereas the said annuity or yearly rent-charge has been duly paid up to the       day of       last, as the said E. F. (*grantor*) and the said A. B. (*grantee*) do hereby respectively admit and acknowledge. And whereas the said G. H. (*purchaser*) has contracted with the said A. B. (*grantee*) for the absolute purchase of the said annuity or yearly rent-charge for the price of £       . Now this Indenture witnesseth that, in pursuance of the said contract, and in consideration of the sum of £       to the said A. B. (*grantee*) now paid by the said G. H. (*purchaser*), the receipt whereof is hereby acknowledged, He, the said A. B. (*grantee*), with the privity of the said E. F. (*grantor*) (testified by his executing these

(a) It is a prudent course to make the grantor a party to the assignment of an annuity, or it should at least be ascertained by application to him that there has been no previous assignment, or that the amount of the annuity has not been repurchased as to part of the same. Where the grantor is not a party to the assignment, he should have immediate notice of it in writing. (2 Byth. & Jarm. Conv. 123 n.)

presents) Doth by these presents assign and transfer unto the said G. H. (*purchaser*) All that the said annuity or yearly rent-charge of £        secured by the hereinbefore recited Indenture dated the day of       , 18       , and the said warrant of attorney and judgment respectively, and all future payments thereof, together with the said warrant of attorney and judgment, and the benefit of all securities for the same. And all the right, title, interest, trust, property, benefit, claim and demand whatsoever or howsoever of him the said A. B. (*grantee*) of, in, to, out of, or upon the same or any part thereof. To have and To hold the said annuity or yearly rent-charge of £        henceforth during the natural life of the said A. B. (*grantee*) for the absolute benefit of him the said G. H. (*purchaser*). (*Letter of attorney*). And this Indenture further witnesseth that in further pursuance of the said contract and for the consideration aforesaid, He, the said C. D. (*old trustee*), by the direction of the said A. B. (*grantee*) and on the nomination of the said G. H. (*purchaser*) (testified by their respectively executing these presents), Doth by these presents assign and transfer unto the said X. Y. (*new trustee*) All and singular the and premises demised by the hereinbefore recited Indenture, dated the        day of       , 18       . And all the estate &c. To have and To hold the said        and premises hereby assigned, or intended so to be, unto the said X. Y. (*new trustee*), his executors, administrators and assigns, henceforth during all the now residue of the said term of 99 years granted by the said Indenture, nevertheless upon the trusts of the same Indenture, but so that all the benefit and advantage of such trusts by the

PURCHASER  
DENT 44.

ASSIGNMENT OF  
ANNUITY.

Assignment of  
annuity.

And of warrant of  
attorney and judgment.  
Interest clause.

Habendum.

Letter of  
attorney.

Second testamentum.

Assignment of  
premises charged.

Habendum.

PRECE-  
DENT 44.ASSIGN-  
MENT OF  
ANNUITY.

## Covenants.

said Indenture declared or intended in favour of the said A. B. (*grantee*), his executors, administrators or assigns, shall belong to and be received and enjoyed by the said G. H. (*purchaser*), his executors, administrators or assigns. (*Covenant by old trustee that he has not incumbered, covenants for title to choses en action*). In witness, &c.

## 45.

*Release of Annuity upon Repurchase thereof, and  
Surrender of term of years for securing same.*

PRECE-  
DENT 45.RELEASE  
OF AN-  
NUITY  
UPON RE-  
PURCHASE.

## Parties.

Recitals—  
grant of  
annuity.Of due  
payment of  
annuity.Of agree-  
ment to re-  
purchase.First tes-  
tatum.Release of  
premises  
from rent-  
charge.

This Indenture, made &c., between A. B., of &c. (*grantee*) of the first part, C. D., of &c. (*trustee*) of the second part, and E. F., of &c. (*grantor*) of the third part. (*Recite grant of annuity including power of repurchase*). And whereas the said annuity or yearly rent-charge of £            has been duly paid by the said E. F. to the said A. B. up to the day of the date of these presents, as he the said A. B. doth hereby admit and acknowledge. And whereas the said A. B. has agreed to accept the sum of £            for the repurchase of the said annuity or yearly rent-charge of £            . Now this Indenture witnesseth that in pursuance of the said recited agreement in such behalf, and in consideration of the sum of £            sterling to the said A. B. now paid by the said E. F. the receipt whereof is hereby acknowledged, He the said A. B. Doth hereby release unto the said E. F., his heirs, executors, administrators and assigns, All and singular the said            and premises by the hereinbefore recited Indenture, dated the day of            , 18    , expressed to be charged with the payment of the said annuity or yearly rent-







and wife) of the first part, of PRECEDENT 46.  
 (retiring trustee) of the second part, and of  
 , and of (new trustees) APPOINTMENT OF  
 of the third part. Whereas the marriage which by NEW  
 the within-written Indenture was recited as having TRUSTEES.  
 been agreed upon between the within-named Recital of  
 and (husband and wife) was solemnized marriage.  
 soon after the date and execution of the same Indenture. And whereas the within-named died Recital of  
 on the day of leaving the said death of  
 his co-trustee him surviving. And whereas one trustee,  
 the said is desirous of being discharged and retirement of  
 from the trusts of the within-written Indenture. And other.  
 whereas the said and (husband Recital of  
 and wife) have, in exercise of the power in such intention  
 behalf within contained, determined to appoint the to appoint  
 said to be a trustee in the room of the new trustees,  
 said deceased, and the said  
 to be a trustee in the stead of the said so  
 desiring to retire as aforesaid, to act together in the  
 execution of the trusts of the within-written Indenture. And whereas it is intended that the within-mentioned sum of £ £3 per cent. Consolidated and that  
 old trustees, as the case may be, and shares in any public company stock has  
 are transferred in the books of such company or by the short deed been trans-  
 prescribed.ferred to  
 them.

One of the Stamp Acts (24 & 25 Vict. c. 91, s. 30) enacts that The  
 the trust estate may be conveyed by several deeds, one of which stamps.  
 will be chargeable with the deed-stamp and the others with the  
 costs only of a duplicate or counterpart. This section is not repealed  
 by the later Act (28 & 29 Vict. c. 96, s. 17), imposing a duty of  
 sixpence for every £100 on transfer of mortgages, and therefore,  
 where a mortgage is transferred on the appointment of new trustees,  
 the provision of the former Act may still be relied on when con-  
 sidered desirable. (Lord Foley v. Commissioners of Inland Revenue,  
 3 Law R. Ex. 263).

PRECE-  
DENT 46.

APPOINT-  
MENT OF  
NEW  
TRUSTEES.

First tes-  
tatum.

Declara-  
tion by  
retiring  
trustee.

Second tes-  
tatum.

Appoint-  
ment of  
new trus-  
tees.

Third tes-  
tatum.

Convey-  
ance by  
retiring  
trustee.

Annuities shall be transferred into the names of the said                      and                      (*new trustees*) in the books of the Governor and Company of the Bank of England, to the intent that the same may be holden by them upon and for the subsisting trusts and purposes of the within-written Indenture. Now this Indenture witnesseth that the said                      doth hereby declare that he is desirous of being discharged from the trusts of the within-written indenture. And this Indenture further witnesseth that, in pursuance and performance of the said recited determination in such behalf, and by virtue and in exercise of the power or authority by the within-written indenture, given or arising unto the said                      and                      (*husband and wife*); and of every or any other power or authority in anywise enabling them in such behalf, They, the said                      and                      (*husband and wife*), by this deed by them legally executed, and upon the acceptance of the said                      and                      respectively (testified by their respectively executing these presents), Do nominate, substitute, and appoint the said                      and                      to be trustees of the within-written Indenture of Settlement in the place or stead of the said                      so deceased, and the said                      so desirous of being discharged from the said trusts as aforesaid. And this Indenture further witnesseth that, in pursuance and further performance of the hereinbefore recited determination in such behalf, He the said (*retiring trustee*), at the request and by the direction of the said                      and                      (*husband and wife*) (testified by their executing these presents), Doth by these presents grant and convey unto the said                      and                      (*new trustees*), their heirs and assigns, All and singular the

messuages, lands, tenements and hereditaments which were comprised in or conveyed by the within-written Indenture, and their respective rights, members, and appurtenances. And all the estate &c. (*Estate clause*). To have and To hold the said messuages, lands, tenements, hereditaments, and premises hereby assured, or intended so to be, unto and to the use of the said                      and their heirs and assigns for ever: Nevertheless, upon the trusts, for the intents and purposes, and with, under, and subject to the powers and provisions in and by the within-written Indenture of Settlement expressed and contained, of and concerning the same or such of them as are now subsisting and capable of taking effect, or being exercised. And this Indenture also witnesseth that it is hereby declared and agreed that the said                      and                      (*new trustees*), and the survivor of them, and the executors and administrators of such survivor, shall stand possessed of the said sum of £                      £3 per cent. Consolidated Annuities so to be transferred into the joint names of them the said                      and                      in the books of the Governor and Company of the Bank of England as aforesaid, and the dividends of the same, upon the trusts, for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations which, under or by means of the within-written Indenture, are now subsisting undetermined and capable of taking effect or of being exercised of and concerning the same, and upon and for no other trust, intent, or purpose whatsoever. (*Covenant by retiring trustee that he had not incumbered*). In witness, &c.

PRECEDENT 46.

APPOINTMENT OF NEW TRUSTEES.  
Haben-  
dum.

Fourth testament.  
Declaration by new trustees

Covenant against incumbrances.

## 47.

*Release and Indemnity to retiring trustees of Settlement. (a)*PRECE-  
DENT 47.RELEASE  
AND IN-  
DEMNITY.

Parties.

Recitals.

First tes-  
tatum.

This Indenture, made &c., between , and (releasors) of the one part, and and (releasees) of the other part. (*Recitals.*) Now this Indenture witnesseth that, in pursuance and performance of the said recited agreement and in consideration of the premises, They the said (releasors) according to and by virtue and means of

Where trustees are entitled to a release.

(a) In the case merely of the appointment of new trustees, it is not usual for the old trustees to require a release either from the new trustees or the cestuis que trust; but when the affairs of the trusteeship are wound up, then the trustees may, by the usage of the profession, properly require a release, though it would seem that according to the practice of the Court of Chancery a release cannot be demanded as of right: (*Chadwick v. Heatley*, 2 Coll. 137; *Fulton v. Gilmour*, Hill on Trustees, 605; *Re Wright's Trusts*, 3 K. & J. 419; *Warter v. Anderson*, 11 Hare, 301; *Re Cater's Trusts*, 25 Beav. 366).

And executors.

It would appear that executors are entitled to require a release when the executorship is wound up and the fund handed over to the parties entitled. (*King v. Mullins*, 1 Dr. 308, see p. 311, Lewin 288). It is not usual to set forth the executorship accounts in schedules to the deed of release (2 Prid. Conv. 526 n.), but to recite generally that the cestuis que trust have investigated and examined the accounts, and are satisfied with them.

Any breach of trust should be stated.

Where a breach of trust has been committed, the nature of such breach should be distinctly stated, so as to prevent the releasors from afterwards alleging their ignorance of it when they executed the deed. (5 Dav. Conv. 628 n.) Releases will in general be governed by the recitals, for if a release is given on a particular consideration recited, notwithstanding that the release concludes with general words, yet the law, in order to prevent surprise, will construe it to relate to the particular matter recited which was under the contemplation of the parties and intended to be released. (*Ramsden v.*

Releases will be

their several and respective interests, ownerships, powers and authorities, Do and each and every of them Doth by these presents remise, release, quit, claim, and for ever discharge unto the said (*releasees*) and each of them, his and their respective heirs, executors and administrators, each and every of

PRECE-  
DENT 47.

RELEASE  
AND IN-  
DEMNITY.  
Release of  
all claims.

Hylton, 2 Ves. S. 304; *Pritt v. Clay*, 6 Beav. 503). Indeed, common sense requires that the general words of a release should be qualified by the recitals, for in order to construe any instrument truly, regard should be had to all its parts, and not merely to one particular clause or division. (*Payler v. Homersham*, 4 M. & S. 423; *Solly v. Forbes*, 2 Br. & B. 38; *Simons v. Johnson* 3 B. & Ad. 175). The rule in equity is, that a release of claims will be considered to extend only to those with which the releasor is acquainted, or which are recited in the deed, or may be reasonably deduced therefrom. (*Broderick v. Broderick*, 1 P. Wms. 239; *Evans v. Llewellyn*, 2 Br. C. C. 150; *Clifton v. Cockburn*, 3 M. & K. 76). To prevent this rule from applying, and to extend the release to any matter or thing appertaining to the subject of release, though not recited, it has become usual to add the words—'and whether hereinbefore alluded to or not.'

governed  
by the  
recitals.

In addition to the release, wherever any complicated dealings have taken place with reference to the trust funds, and in particular any irregular investments or transactions, then the trustees are entitled to a covenant for indemnity from the cestuis que trust. Where also there are other persons than the releasors who can be interested in or may have claims on the matter or property to which the release relates, then the releasing parties generally execute a covenant of indemnity as well as a release. (2 Prid. Conv. 524 n.)

Where  
trustees  
entitled to  
a covenant  
for indem-  
nity.

The costs of the release should either be paid by the cestuis que trust or deducted by the trustees themselves out of the trust funds before being transferred or paid to the parties. (5 Dav. Conv. 640 n.)

Costs of  
release.

Where at the time of the release sums have been fraudulently received by the releasee of which the releasor was ignorant, but the release in general terms extends to such sums, then the proper course to pursue is to file a bill, not to compel the releasee to pay back the sums, but to have the release set aside *in toto*. (*Skilbeck v. Hilton*, 2 L. R. Eq. 587).

Where bill  
should be  
filed to set  
aside re-  
lease.

PRECE-  
DENT 47.

RELEASE  
AND IN-  
DEMNITY.

them, All and all manner of actions or suits, causes of action or suit, accounts, reckonings, claims, and demands whatsoever or howsoever, which they the said (*releasors*) any or either of them, have or hath, or which he, she, or they can or may, or but for these presents, he, she, or they, or his, her, or their respective executors or administrators, could or might have, institute, enforce, or set up against, upon, or from them the said (*releasees*), or either of them, or his or their respective heirs, executors, or administrators, for or by reason, or means, on account or in consequence of the said sums or amounts of stock or the dividends thereof, or in anywise relating to or concerning the aforesaid settlement, or the performance or nonperformance of all or any of the trusts thereof.

Second tes-  
tatum.

Indemnity.

And this Indenture further witnesseth that, in pursuance and further performance of the said recited agreement, and for the considerations aforesaid, each of them the said (*releasors*) doth for himself and herself covenant with the said (*releasees*), their executors and administrators jointly, and with each of them, his executors and administrators, severally: That they the said (*releasors*), some or one of them, his, her, or their heirs, executors, or administrators, some or one of them, shall and will from time to time, and at all times for ever hereafter, at his, her, or their own costs and charges, in all things well and sufficiently indemnify, save harmless, and keep indemnified the said (*releasees*), and each of them, his and their respective heirs, executors, and administrators, from and against all and all manner of actions, suits, proceedings, costs, losses, charges, damages, expenses, claims and demands whatsoever or howsoever, by reason or on account of the said (*releasees*)

or either of them having so transferred the said sum of £ £3 per cent. Consolidated Bank Annuities into the names of the said and (new trustees) in the books of the Governor and Company of the Bank of England, as aforesaid. In witness, &c.

PRECEDENT 47.

RELEASE  
AND IN-  
DEMNITY.

48.

*Deed of Disclaimer. (a)*

This Indenture, made &c., between A. B. of &c. (disclaiming trustee) of the one part, and C. D. of &c. (remaining trustee) of the other part. (*Recite testator's will, death and probate*). And whereas the said A. B. is desirous to renounce the executorship and disclaim the trusts of the said will in manner herein-after contained. Now this Indenture witnesseth that, in pursuance of the said desire, He the said A. B. Doth by these presents renounce and disclaim unto the said C. D., his heirs, executors, administrators and assigns, All and singular the messuages, lands,

PRECEDENT 48.

DISCLAIMER.

Parties.

Recitals—  
of title.

Of desire  
to dis-  
claim.

Testatum.

Renuncia-  
tion and  
disclaimer.

(a) A disclaimer is sometimes made by deed-poll, but the better course we think is to have an indenture. An executor who has in any way intermeddled with the testator's assets cannot renounce, and in like manner a trustee who has in any way acted in the trust is not in a position to disclaim. It must be by a trustee who has not accepted. It is most prudent that a deed of disclaimer should be executed by a person named trustee who refuses to accept the trust, because such deed is distinct evidence of the disclaimer, and admits of no ambiguity, and such is the usual course to adopt. But still there may be conduct which amounts to a clear disclaimer. (*Stacey v. Elph*, 1 My. & K. 195). Or a trustee may disclaim the trust at bar in a suit in chancery. A disclaimer of the trusts of a deed does not often take place, because the consent of the party to act is generally obtained beforehand. The trustee should simply disclaim, and not profess to convey the property assured to him in trust. (*Nicloson v. Wordsworth*, 2 Sw. 365).

Nature and  
incidents  
of a dis-  
claimer.

PRECE-  
DENT 48.

Dis-  
CLAIMER.

tenements, hereditaments, and real and personal estate which by the hereinbefore recited will were given, devised and bequeathed unto them the said A. B. and C. D. upon the trusts of the said will ; and all rights in respect of the executorship thereof, and all trusts and powers thereby given to them the said A. B. and C. D., and all rights and privileges thereunder, and all trusteeship in respect of the same : To the intent that the said C. D. may henceforth become, continue, and be the sole executor and trustee under the said will in the same manner in all respects as if he alone had been thereby constituted and appointed such executor and trustee. In witness, &c.

## 49.

*Grant of Right of Way. (a)*

PRECE-  
DENT 49.

RIGHT OF  
WAY.

Parties.

Recitals of  
title.

Testatum.

This Indenture, made &c., between of  
&c. (*grantor*) of the one part, and of  
&c. (*grantee*) of the other part. (*Recitals showing the title of the grantor and the circumstances under which the right of way is granted*). Now this Indenture witnesseth that, in pursuance of the said agreement and in consideration of the premises, He the said

Nature of  
way to be  
granted  
should be  
stated.

(a) On the grant of rights of way it should be stated with clearness what kind of way is intended to be conferred, namely, whether it is to be a foot-way, or horse-way, or carriage-way, or a drift-way—that is, a way over which cattle may be driven. A horse-way includes a foot-way, and a carriage-way a horse-way ; but again, a carriage-way does not necessarily include a drift-way. Care should also be taken to mention with precision the course and direction and dimensions of the way. A plan is the most convenient means of describing the route and nature of the way to be granted. It should also be provided at whose expense the way is to be kept in repair. (4 Byth. & Jarm. 148, 9 n.)



(*grantor*) Doth by these presents grant unto the said (*grantee*), his heirs and assigns, a right of way and passage to and for the said (*grantee*), his heirs and assigns, and his and their servants and workmen with or without horses, carts, or carriages, at all reasonable times over and along the (*short description of parcels*), and delineated and set forth on the map or plan drawn in the margin of these presents, to or from , for the ordinary purposes of traffic or passage, such way or road to be from time to time kept in a proper state of repair at the expense of the said (*grantor*), his heirs, executors, administrators, or assigns. In witness, &c.

PRECE-  
DENT 49.

RIGHT OF  
WAY.

Right of  
way.

Road to be  
kept in  
repair by  
grantor.

50.

*Assignment of Letters Patent, dated* ,  
*Granted for* (Title).

This Indenture, made &c., between of PRECE-  
&c. (*assignor*) of the one part, and of DENT 50.  
&c. (*assignee*) of the other part. Whereas, by letters ASSIGN-  
patent under the great seal of Great Britain, bearing MENT OF  
date at Westminster, the day of LETTERS  
, Parties. PATENT.  
after reciting that the said (*assignor*) had by his Recital of  
petition represented that he had invented (*title of* letters  
*patent*), that he was the first and true inventor patent.  
thereof, and that the said invention had never been  
practised or used by any other person or persons  
whomsoever, to his knowledge or belief, Her Majesty  
did give and grant unto the said (*assignor*), his ex-  
ecutors, administrators and assigns special license,  
full power, sole privilege and authority that the said  
(*assignor*), his executors, administrators and assigns,  
by himself and themselves, and by his and their

PRECH-  
DENT 50.

ASSIGN-  
MENT OF  
LETTERS  
PATENT.

deputy or deputies, servants or agents, or such others as the said (*assignor*), his executors, administrators or assigns should at any time agree with, and no others, from time to time, and at all times thereafter during the term of      years therein expressed, should and lawfully might make, use, exercise, and vend his said invention within that part of the United Kingdom of Great Britain and Ireland called England, Her Majesty's dominion of Wales and town of Berwick-upon-Tweed, in such manner as to the said (*assignor*), his executors, administrators and assigns, or any of them should in his or their discretion seem meet; And that the said (*assignor*), his executors, administrators and assigns, should and lawfully might have and enjoy the whole profit, benefit, commodity and advantage, from time to time coming, growing, accruing and arising by reason of the said invention during the term of      years therein mentioned: To hold, exercise and enjoy the said license, power, privileges and advantages unto the said (*assignor*), his executors, administrators and assigns during the term of 14 years from the date of the now reciting letters patent, under and subject to the provisions and conditions therein contained, and among them subject to a condition that a specification should be enrolled which has been done as hereinafter recited.

Recital of  
enrolment  
of specifi-  
cation.

And whereas a specification of the invention for which such letters patent have been obtained was duly enrolled in Her Majesty's High Court of Chancery, on the      day of      , and within six calendar months after the date of the said letters patent. And whereas the said (*assignor*) has contracted with the said (*assignee*) for the absolute sale to him of the said letters patent, and the benefit of

Recital of  
contract.

the invention and improvements for which the same have been obtained, for the price of £ . Now this Indenture witnesseth that, in pursuance of the said contract and in consideration of the sum of £ sterling to the said (*assignor*) now truly paid by the said (*assignee*), the receipt, &c., He, the said (*assignor*), Doth by these presents assign and transfer unto the said (*assignee*), his executors, administrators and assigns, All those the letters patent hereinbefore recited or mentioned, and all benefit of the invention and improvements for which the same have been obtained, and all future improvements to be made thereon by the said (*assignor*); and all letters patent to be hereafter obtained for the same in England, Wales, and Berwick-upon-Tweed aforesaid, respectively: And all the right, title, interest, trust, property, benefit, claim and demand whatsoever or howsoever, of him the said (*assignor*) of, in, to, out of and upon the same letters patent invention and improvements. To have, hold, take and enjoy the said letters patent, invention, and improvements hereinbefore assigned, or intended so to be, unto and by the said (*assignee*), his executors, administrators and assigns, for and during all the residue of the several terms of years for which the said letters patent have been or can or shall or may be granted or enlarged, and in as full, ample and beneficial manner as the said (*assignor*) can or may assign the same. And the said (*assignor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*assignee*) his executors, administrators and assigns, in manner following (that is to say): That he, the said (*assignor*) was the first and true inventor of the invention and improve-

PRECEDENT 50.

ASSIGNMENT OF LETTERS PATENT.  
Testatum.

Assignment of letters patent.

Interest clause.

Habendum.

Covenants for title.

PERCE-  
DENT 50.

ASSIGN-  
MENT OF  
LETTERS  
PATENT.

ments for which the said letters patent hereinbefore assigned, or intended so to be, were obtained, and that the public use or knowledge of the same did not previously exist in Her Majesty's dominions, and that, notwithstanding any act, deed, matter or thing by the said (*assignor*), the said letters patent were duly and properly specified, and that the same letters patent are valid and effectual and not void or voidable, and that, notwithstanding anything by the said (*assignor*) done to the contrary, (a) he the said (*assignor*) now hath in himself full power and absolute authority to assign and transfer the said letters patent and invention and improvements hereby assigned, or intended so to be, unto the said (*assignee*), his executors, administrators and assigns, according to the true intent and meaning of these presents; And that it shall be lawful for the said (*assignee*), his executors, administrators and assigns, to have, hold, receive, take and enjoy the privileges and benefits conferred by the said letters patent hereby assigned, or intended so to be, and also the said letters patent respectively, without any let, suit, interruption or denial by the said (*assignee*), or any person or persons whomsoever, claiming or to claim by, from, through, under, or in trust for him; And also that the said (*assignor*), his executors and administrators, and all persons claiming or to claim by, from, through, under, or in trust for him, the said (*assignor*), shall and will from time to time and at all

Covenants  
should be  
qualified.

(a) The covenants should be qualified by the usual words, 'notwithstanding anything by the assignor done to the contrary,' as it has been held that a covenant in general terms in such an assignment for absolute right to assign is not restrained by the other parts of the deed. (*Hesse v. Stevenson*, 3 B. & P. 565).

times hereafter upon every reasonable request, and at the costs and charges in all things of the said (*assignee*), his executors, administrators or assigns, make, do, execute, and perfect, or cause or procure to be made, done, executed and perfected, all such further and other lawful and reasonable acts, deeds, assignments, powers, authorities and assurances whatsoever, for further, better, more perfectly, lawfully and absolutely or satisfactorily assigning or assuring unto, or vesting in the said (*assignee*), his executors, administrators and assigns, and also authorising or empowering him or them to receive and obtain the benefits and privileges conferred by the said letters patent hereby assigned, or intended so to be, and of the invention and improvements for which the same have been obtained, as by the said (*assignee*), his executors, administrators and assigns, or his or their counsel in the law shall be reasonably advised or devised, and required and be tendered to be made, done and executed. In witness, &c.

PRECEDENT 50.

ASSIGNMENT OF LETTERS PATENT.

5

# 51.

*Deed of Covenants on being engaged as an Assistant in the Profession of a Surgeon and Apothecary, at , not to practise or be concerned therein within miles from that place.*

This Indenture, made &c., between Edgar Thomson, of &c. of the one part, and William Bates, of &c. of the other part. Whereas, the said Edgar Thomson has agreed to engage the said William Bates as an assistant to him, the said Edgar Thomson, in the exercise of his profession and practice of a surgeon and apothecary, but only upon the terms

PRECEDENT 51.

DEED OF COVENANTS BY SURGEON.

Parties.

Recital of terms of engagement.

PRECE-  
DENT 51.

DEED OF  
COVE-  
NANTS BY  
SURGEON.  
Testam.

Covenants  
in restric-  
tion of  
practice.

Not to  
solicit  
customers.

that the said William Bates should enter into such covenants as hereinafter contained. Now this Indenture witnesseth that, in pursuance and performance of the said agreement in such behalf, and in consideration of the said Edgar Thomson so engaging the said William Bates to be such assistant as aforesaid, He the said William Bates Doth hereby for himself, his heirs, executors and administrators, covenant with the said Edgar Thomson, his executors and administrators, that he the said William Bates shall not nor will, so long as the said Edgar Thomson shall continue or be engaged in the said profession or practice of a surgeon or apothecary at or within miles therefrom, practise or be concerned as a physician, surgeon, or apothecary in the town of or at any place within the distance of miles therefrom, either alone or together or in partnership with any person or persons whomsoever; or so long as the said Edgar Thomson shall continue or be engaged in the profession or practice of a surgeon or apothecary at aforesaid, or within miles therefrom, engage himself the said William Bates as assistant to any other surgeon or apothecary in aforesaid, or within the distance of miles therefrom; or at any time whilst the said Edgar Thomson shall continue or be engaged in the said practice or profession of a surgeon or apothecary at or within miles therefrom, in any manner howsoever, either directly or indirectly, act, engage, or be concerned in the practice or profession of a surgeon or apothecary in aforesaid, or within the distance of miles therefrom; and also that he the said William Bates shall not nor will either personally or by any

other person or persons, or directly or indirectly, solicit the present or future patients of him the said Edgar Thomson, or any person or persons who may have been the patient or patients of the said Edgar Thomson within the period of the last        years, to employ him the said William Bates or any other person or persons either as a surgeon or apothecary; and also that he the said William Bates shall not nor will at any time hereafter, either directly or indirectly, induce or prevail upon, or attempt or seek to induce or prevail upon, any of the present or future patients of the said Edgar Thomson, or any person who has been his patient within the last        years, to discontinue employing or consulting the said Edgar Thomson in the said practice of a surgeon or apothecary; And furthermore, that in case he the said William Bates shall contravene or fail to observe and perform any of the covenants in this behalf hereinbefore contained, then that he the said William Bates, his heirs, executors, or administrators, shall and will, on demand, pay, or cause to be paid, unto the said Edgar Thomson, his executors, administrators, or assigns, the sum of £        sterling by way of liquidated damages. (a) In witness, &c.

PRECE-  
DENT 51.

DEED OF  
COVE-  
NANTS BY  
SURGEON.

Penalty.

(a) When it is the intention of the parties to a contract that either of them committing a breach of any of the stipulations should pay a fixed sum as damages, there should be a clause as to 'liquidated damages,' otherwise the sum agreed to be paid will be considered in the nature of a penalty, and the amount of damages will have to be assessed by a jury. (*Astley v. Weldon*, 2 Bos. & Pul. 346; *Betts v. Burch*, 4 H. & N. 506).

Clause as  
to 'liqui-  
dated  
damages.'

## 52.

*Power of Attorney to Execute Deed. (a)*PRECE-  
DENT 52.POWER OF  
ATTORNEY.

Know all men by these presents, that I, A. B., of &c., do hereby constitute and appoint C. D., of &c., my attorney for me, and in my name and as my act and deed, to sign, seal, and deliver a certain Indenture, dated &c. and made &c. whereby &c. (*State shortly the purport of the deed*). In witness, &c.

Nature of  
a power of  
attorney.

(a) When one person executes a formal instrument empowering another to act in his stead, the donor of the power is generally called the principal, the donee the attorney, and the deed a power of attorney. (8 Byth. & Jarm. 1 part, 1 ed. 3, by Whitley Stokes).

How the  
deed  
should be  
prepared.

The deed should be prepared in the ordinary way in the name of the principal. It is not necessary to mention the attorney as one of the conveying parties, because the power of attorney passes no interest, but merely gives an authority to execute the deed in the name of the principal. (1 Hughes' Pr. 198 n.) When a deed is executed by attorney, the latter ought to deliver it in the name and as the act and deed of his principal (Combes's Case, 9 Rep. 75), and should sign the deed with the name of the principal alone or with the addition of 'By C. D. (*his own name*), his attorney.' The signature to the receipt clause indorsed for the purchase-money must be signed by the attorney in his own name, but with the additional description of 'the above-named attorney for the said (*vendor*).'

And exe-  
cuted.Testimo-  
nium  
clause.

The testimonium should be as follows: 'In witness whereof the said (*principal*) by (*attorney*) of, &c., his attorney lawfully authorised in that behalf by a power of attorney, under the hand and seal of the said (*principal*), dated the      day of      and hereunto annexed, has hereunto set his hand and seal the day and year first above written.' The form of attestation may be thus: 'Signed, sealed, and delivered by the within-named (*principal*) by (*attorney*), as his attorney in the presence of      . The power of attorney should accompany the deed. (8 Byth. & Jarm. 26 and 81 n.; 9 Id. 172, 3, 4).

Form of  
attestation.Where  
power to

Where a power is intended to be used in the United States of America, the person executing it should attend at the office of the



## 53.

*Power of Attorney to Sell Estate, and in the meantime Manage Same. (a)*

To all to whom these presents shall come,  
of &c., gentleman, sends greeting.  
Whereas the said is seised of &c. (*short description of estate*). And whereas the said hath determined to appoint of &c. and of &c. (*attorneys*), and the sur-

PRECE-  
DENT 53.POWER TO  
SELL  
ESTATE.Recital of  
seisin of  
estate.

Consulate, where the execution will be duly authenticated; or the party should execute the power in the presence of a notary public and two other persons, and the notary should attest it by an act in the usual way. The papers should then be taken to the consulate office of the United States at the nearest port, where the necessary authentication of the notary's act may be obtained. No stamp will be requisite. (8 Byth. & Jarm. 71 n.)

be used in  
the United  
States.

(a) Formerly a power of attorney was not so efficacious an instrument as at present, since, if the grantor of the power were dead at the time of any act done or payment made, it was inoperative. Now, however, it is provided (22 & 23 Vict. c. 35, s. 26), that any act done or payment made by any trustee, executor, or other person ignorant at the time that the power has been determined, or of the death of the grantor, will, notwithstanding such circumstance, hold good. There is, however, a remedy over as against the person to whom the money is paid.

Enactment  
as to  
powers of  
attorney.

A power of attorney to be exercised in Australia and in many other British colonies requires two witnesses to the signature of the grantor. One of these witnesses must declare to the due execution of the instrument in his presence and in that of the other witness, before a notary public or a mayor, who must also verify such declaration.

Mode of  
execution  
of power of  
attorney  
for Aus-  
tralia.

In some colonies particular forms are required, which can only be ascertained by enquiry from the agents for such colonies. (1 Dav. Conv. 421, 2 n.) In like manner, though not legally necessary, it is desirable that a power of attorney given in a colony, but to be exercised in England, should be executed with the same formalities.

\*RECE-  
DENT 53.

POWER TO  
SELL  
ESTATE.

Of inten-  
tion to  
appoint  
attorneys.  
Testatum.

Appoint-  
ment of  
attorneys.

To sell  
estate.

And in  
meantime  
to receive  
rents and  
manage  
estate.

vivor of them, to be the attorneys or attorney of him  
the said , to sell the said estate,  
and in the meanwhile to manage the same and apply  
the moneys to arise from such sale in manner herein-  
after expressed. Now these presents witness that the  
said Doth hereby make, constitute, and  
appoint the said and (*at-  
torneys*), and the survivor of them, the true and  
lawful attorneys or attorney, agents or agent, of, for,  
and in the name and on behalf of the said ,  
as soon as conveniently can be to sell and absolutely  
dispose of All that (*short description of estate*) and to  
make such sale by public auction or private contract,  
or partly in each such mode, and with, under, and  
subject to such provisions and conditions of sale, and  
in such manner generally as the said  
and (*attorneys*), or the survivor of them,  
may deem advisable or expedient, and with full  
powers for the said and  
(*attorneys*), and the survivor of them, to reserve a  
bidding or biddings upon any such sale or sales by  
auction, and to buy in, rescind, modify or vary the  
contract or contracts for sale of the same premises or  
any of them, and resell the same in or by all or any  
of the modes or means aforesaid, without being  
answerable for any loss or expense to be occasioned  
thereby, and to deal with such contract or contracts,  
and the deposits or damages thereon as he or they  
may think fit; And also in the meantime and until  
such sale or sales to receive and take the rents,  
issues, profits, and proceeds of the said  
estate and premises, and to do, perform, and execute  
all such acts, deeds, matters or things whatsoever as  
shall or may be requisite or necessary for managing

and conducting the said estate, and generally to act in the receipt and collection of the said rents, issues, profits, and proceeds, and the management, arrangement, and superintendence of the same estate and premises in such manner as the said                      and

(attorneys), or the survivor of them, shall

think most for the benefit and advantage of the said

, and as fully and effectually in all respects as he himself could have done if actually present, and from and out of the moneys to arise from such sale or sales as aforesaid, and the rents, issues, profits, and proceeds (if any) of the said estate and premises, to deduct or retain his or their charges and expenses of and attending making out the title to the said premises, or the execution of the powers and directions hereby given, and the money which he or they shall disburse for the taxes, repairs, and outgoings of the same premises, or enforcing any contract or contracts for sale of the same premises, or any of them, or carrying the provisions of these presents into execution; And in the next place liquidate and pay all debts and charges which may be due or ought to be paid for or in respect of the said estate and premises, and as to the surplus of the money to be raised under the exercise of the powers aforesaid which shall remain unapplied for the purposes aforesaid, remit the same unto the said                      ,

his executors, administrators, or assigns. And the said                      doth hereby authorise and empower

the said                      and                      (attorneys), and the survivor of them, to substitute any person or persons to act under him or them in all or any of the matters aforesaid, and every such substitution at pleasure to revoke and to appoint any other person

PRECEDENT 53.

POWER TO SELL ESTATE.

Application of sale moneys and rents.

Power to appoint substitutes.

PRECE-  
DENT 53.

POWER TO  
SELL  
ESTATE.

Revocation  
of former  
powers.

or persons in his or their stead, and to pay to such substitute or substitutes such salary or salaries, wages, or compensation as the said and (attorneys), or the survivor of them, may deem fair and reasonable. And the said doth hereby engage to ratify and confirm whatsoever the said and (attorneys), and the survivor of them, and his or their substitute or substitutes shall do or cause to be done in the premises by virtue of these presents. And the said doth hereby revoke all former powers of attorney by him given to any person or persons whomsoever, for all or any of the purposes aforesaid, or in anywise relating to or concerning the said estate. In witness, &c.

## 54.

*Release by Residuary Legatees.*

PRECE-  
DENT 54.  
RELEASE  
BY LEGA-  
TES.

Recitals  
of will and  
division of  
estate.

Of pay-  
ment of  
debts and  
legacies.

That  
residue  
amounts to  
so much.

That in-  
terest on  
shares has  
been paid.

To all to whom these presents shall come (*residuary legatees*) severally send greeting. (*Recite the will of the testator, and the sale, collection, and appropriation of his estate according to the circumstances*). And whereas the said and (*trustees and executors*) have paid and satisfied all the debts of the said testator, and also his funeral and testamentary expenses, and have delivered and paid all the specific and pecuniary legacies bequeathed by his said will. And whereas the clear residue of the real and personal estate of the said the testator, now consists of the sum of £ sterling, of which each of the said (*residuary legatees*) is entitled to one share, amounting to the sum of £ . And whereas all interest on the said respective shares has been

duly paid to the said parties entitled thereto, as they do hereby respectively acknowledge. And whereas the said (*residuary legatees*) respectively have carefully examined the accounts of the said

PRECE-  
DENT 54.

RELEASE  
BY LEGA-  
TEES.

That resi-  
duary  
legatees  
are satis-  
fied with  
accounts.

and as such executors and trustees as aforesaid, and the account and application of the real and personal estate of the said testator deceased, and the various vouchers for the same, and are perfectly satisfied with such accounts, and that such amounts only are so coming in respect of the produce of the said real and personal estate as aforesaid. And whereas the said and

Of pay-  
ment of  
shares.

as such trustees and executors as aforesaid, have, previously to the execution of these presents, paid the sum of £ , being one part of the said residue, to each of the said (*residuary legatees*) as they the said (*residuary legatees*) respectively do hereby acknowledge. Now these presents witness that, in consideration of the said payment of the said several sums of £ , so made in manner hereinbefore mentioned, and in consideration of other the premises, They the said (*residuary legatees*) Do and each and every of them Doth by these presents remise, release, and for ever quit claim unto the said (*trustees and executors*), their heirs, executors, and administrators, and each of them, All the real and personal estate and produce of real and personal estate of the said the testator, an abstract of the accounts relative to the produce whereof is contained in the schedule to these presents. And all and all manner of actions, suits, cause and causes of action and suit, debts, duties, sum and sums of money, accounts, reckonings, legacies, claims, and demands whatsoever at law and in equity, which they the said

Testatum.

Release of  
all claims.

PRECE-  
DENT 54.

RELEASE  
BY LEGA-  
TRES.

(*residuary legatees*), or any of them, or any other person or persons on the account of them or any of them now have or hath, or which they or any of them, or the heirs, executors, or administrators of them or any of them can, shall or may at any time or times hereafter have, claim, challenge, or demand upon or against the said                      and                      (*executors and trustees*), their heirs, executors, or administrators, or any of them, for or by reason or on account of the real and personal estate of the said                      the testator deceased, or the produce thereof, as so mentioned in or appears from the said accounts, the abstract whereof is contained in the schedule to these presents, or any part or parts thereof, or for or by reason or means of any act, matter, or thing in anywise relating thereto, and whether hereinbefore alluded to or not. In witness, &c.

The schedule above referred to. (a)

55.

*General Release.*

PRECE-  
DENT 55.

GENERAL  
RELEASE.

Recitals  
of matters  
in dispute.

Testatum.

This Indenture, made &c., between                      , of &c. (*releasor*) of the one part, and                      , of &c. (*releasee*) of the other part. (*Recitals showing the subject matter or nature of the dispute or difference between the parties*). Now this Indenture witnesseth that, in pursuance and performance of the said recited agreement in such behalf and in consideration of the

(a) An absolute and unqualified release of a residue cannot properly be made, because portions of the testator's property may not be discovered or ascertained; therefore, whenever a release in respect of a residue is given, the prudent course is to set forth the account or abstract of the account in a schedule to the deed.

premises, He the said (*releasor*) Doth by these presents release, quit, claim and for ever discharge unto the said (*releasee*), his heirs, executors and administrators, All and all manner of actions or suits, causes of action or suit, and all proceeds, sums of money, accounts, reckonings, claims and demands whatsoever or howsoever, which the said (*releasor*) hath, or can, or may, or which but for these presents he, his heirs, executors or administrators, could or might have, institute, enforce, or set up against, upon or from the said (*releasee*), his heirs, executors or administrators, for, by reason, or means, on account, or in consequence of all or any of the acts, deeds, conveyances, assignments, payments, dealings, transactions, matters or things hereinbefore recited, or for, or in respect, on account, or by reason, or means, or in consequence of any other act, deed, dealing, transaction, matter or thing at any time prior to the date or execution of these presents, and whether hereinbefore alluded to or not. In witness, &c.

PRECEDENT 55.  
GENERAL RELEASE.  
Release generally of all claims.

## 56.

*Notice Annuling Contract on Sale by Auction. (a)*

To                      of                      . Whereas I  
of                      caused certain hereditaments  
belonging to me to be put up to sale by public auction.

PRECEDENT 56.  
NOTICE ANNULING CONTRACT.  
Recital of sale by auction.  
How notices should be prepared and delivered.  
Stamping not necessary.

(a) Where it is the object of a notice to communicate a fact, it should be correctly and clearly stated. A notice should be delivered, not by the person himself on whose behalf it is given, but by a third party, who should keep a copy on which he should indorse a memorandum showing when and to whom he delivered the same. The delivery, when practicable, should be to the party to whom it is addressed personally. Notices do not require to be stamped. (6 Byth. & Jarm. 565).

PRECEDENT 56.

NOTICE ANNULLING CONTRACT.

That person to whom notice given became purchaser.

That purchase has not been completed.

Notice of forfeiture of deposit and intention to resell.

on the            day of            , at            , in  
the county of            , in            lots, according to  
printed particulars and conditions of sale then and  
there produced. And whereas at such auction you,  
the said            became the purchaser of part  
of the said hereditaments (being lot            of the  
said particulars) for the sum of £            , and on the  
said            day of            you signed and entered  
into a contract for the purchase of the property com-  
prised in the said lot, according to the said conditions,  
and pursuant to one of the said conditions paid as a  
deposit, and in part of the said purchase-money, the  
sum of £            , and agreed to pay the remainder of  
the said purchase-money according to the said con-  
ditions, and which required the same to be paid on  
the            day of            . And whereas you have  
not paid the remainder of the said purchase-money  
nor completed your said purchase pursuant to the  
said agreement and conditions of sale, but have  
neglected or failed to comply with such conditions.  
Now I do hereby give you notice that in conformity  
with the            th of the said conditions of sale the  
said sum of £            paid by you as a deposit is  
forfeited. And furthermore I do hereby give you  
notice that by virtue of the said conditions of sale I  
shall proceed to resell the hereditaments so purchased  
by you as aforesaid, and that in the event of any  
deficiency or loss arising from or occasioned by such  
second sale, I shall take proceedings to recover the  
same from you, together with all expenses attending  
the same, and by way of liquidated damages, or  
otherwise as I may be advised. Dated this  
day of            .



## 57.

*Notice to Quit by Landlord to Yearly Tenant. (a)*

To A. B., of &c. (*tenant*). I hereby give you notice to quit and deliver up to me on the       day of       next, being the expiration of the year of your tenancy, possession of All that farm, land and premises called       Farm in the parish of       , held by you of me as yearly tenant.

Dated the       day of       , 18       .

Yours, &c.,

(Signed) C. D. (*landlord*).

PRECE-  
DENT 57:

NOTICE TO  
QUIT.

## 58.

*Notice to Determine Lease by Lessee to Lessor.*

To A. B., of &c. (*lessor*). In pursuance of the power for such purpose given to me in an indenture, dated the       day of       18       , and made between you of the one part, and myself of the other part, and whereby you granted me a lease of All that messuage and premises situate and distinguished as No.       Street, in the county of Middlesex, for the term of 21 years, I hereby give you notice that it is my intention to determine the said lease, and to

PRECE-  
DENT 58.  
NOTICE TO  
DETERMINE  
LEASE.

(a) A tenancy may be determined by either party at the expiration of any year of the tenancy by giving half a year's notice, to be computed in the customary manner: thus, for instance, a tenancy commencing at Lady-day may be determined by a notice delivered on or before the preceding Michaelmas-day. (*Roe d. Durant v. Doe*, 4 M. & P. 391). It is better to state the particular day in the notice to quit, though a notice in general terms will be sufficient, for it is not required that a notice should be worded with the accuracy of a plea. (*Doe d. Williams v. Smith*, 5 Ad. & Ell. 350).

How  
tenancy  
may be de-  
termined.

PRECE-  
DENT 58.  
NOTICE TO  
DETERMINE  
LEASE.

deliver up possession of the messuage and premises therein comprised on the       day of       18 , being the expiration of the first seven years of the said term. Dated the       day of       18 .

Yours, &c.,

C. D. (*lessee*).

59.

*Notice by Purchaser of Legacy to Testator's Executors.*

PRECE-  
DENT 59.  
NOTICE BY  
PUR-  
CHASER OF  
LEGACY.

To A. B., of &c., and C. D., of &c. (*executors*). I hereby give you notice that by indenture dated the       day of       18 , and made between E. F. (a legatee named in the will of G. H. of &c., deceased, of which you are the executors) of the one part, and myself of the other part, the legacy of £       bequeathed to the said E. F. by the said will has been assigned to me absolutely, and I hereby require you to pay the said legacy to me, when and as the same shall by law become payable. Dated the       day of       , 18 .

Yours, &c.

X. Y. (*assignee*).

(*Address*).

60.

*Notice by Purchaser of Reversionary Interest to Trustees of Marriage Settlement. (a)*

PRECE-  
DENT 60.  
NOTICE BY  
PUR-  
CHASER OF  
REVER-  
SIONARY  
INTEREST.  
Notice to  
to be given  
on assign-

To A. B., of &c., and C. D., of &c. (*trustees*). I hereby give you notice that, by indenture dated the

(a) Notice should always be given to the trustees of a marriage settlement or other deed of the assignment of a chose en action; otherwise a subsequent purchaser or mortgagee who has given such

day of                      , 18                      , and made between E. F., of &c. (one of the four children of G. H. of &c. and L. M. his wife) of the one part, and myself of the other part, All that the one equal fourth part or share of the said E. F. in the sum of £                      £3 per cent. Consolidated Bank Annuities now standing in your names in the books at the Bank of England, as the trustees of the settlement made upon the marriage of the said G. H. and L. M. his wife, or invested by you in or upon such stocks, funds and securities as thereby authorised, was assigned by the said E. F. to myself absolutely, subject to the several life interests therein of the said G. H. and L. M. his wife. Dated the                      day of                      , 18                      .

PRECE-  
DENT 60.  
NOTICE BY  
PUB-  
CHASER OF  
REVER-  
SIONARY  
INTEREST.

Yours, &c.,

X. Y. (*assignee*).

(*Address*).

# 61.

## *Notice to First Mortgagee of Second Mortgage.*

To A. B., of &c. (*first mortgagee*). I hereby give you notice that, by indenture dated the                      day of                      , 18                      , and made between C. D., of &c., of the one part, and myself of the other part, the messuages, lands and hereditaments, situate in the parish of                      in the county of                      , and comprised in your mortgage security dated the                      day of                      , 18                      , were conveyed unto myself, my heirs and assigns, for securing the

PRECE-  
DENT 61.  
NOTICE TO  
FIRST  
MORT-  
GAGEE.

notice will gain priority, for notice is necessary to perfect the title and to give a complete right *in rem*, and not merely a right as against him who assigns his interest. (*Dearle v. Hall*, 3 Russ. 1, see p. 24).

ment of  
chose en  
action.

PRECE-  
DENT 61.

NOTICE TO  
FIRST  
MORT-  
GAGER.

sum of £                      and interest, subject to your mort-  
gage thereon. Dated the                      day of                      18 .

Yours, &c.,

E. F. (*second mortgagee*).  
(*Address*).

## 62.

### *Notice to Mortgagor by Mortgagee of Intention to Exer- cise Power of Sale. (a)*

PRECE-  
DENT 62.

NOTICE OF  
INTENTION  
TO EXER-  
CISE POWER  
OF SALE.  
Recital of  
mortgage.

That sum  
is owing  
for princi-  
pal and  
interest.

Notice  
requiring  
payment,  
or in de-  
fault sale.

Notice to  
call in  
money not  
actually  
necessary.

To A. B., of &c. (*mortgagor*). Whereas, by Inden-  
ture dated the                      day of                      18 ,  
and made between yourself of the one part, and  
myself of the other part, certain messuages, lands  
and hereditaments, situate in the parish of  
in the county of                      , were conveyed by you  
to me by way of mortgage for securing the sum of  
£                      and interest. And whereas there is now  
due and owing to me on such security the sum of  
£                      for principal money, interest and costs.  
Now in compliance with the proviso for such purpose  
contained in the said indenture of mortgage I hereby  
require you to pay off the said sum of £                      so  
due to me for principal money, interest and costs as  
aforesaid, on or before the                      day of                      ,  
18 , being the expiration of six calendar months  
from the date hereof. And I hereby further give  
you notice that unless the said sum of £                      is  
paid on or before that day I shall proceed to sell the

(a) Mortgagees from courtesy frequently give a notice of their  
intention to call in the principal money, but such notice, unless  
made necessary by the special terms of the deed, is not requisite,  
for they may pursue any of their remedies for recovery of the money  
at any time after the day fixed for its payment without previous  
notice. (6 Byth. & Jarm. 575 n.)

messuages, lands and hereditaments comprised in the said indenture, or a competent portion of the same, in exercise of the power of sale therein contained.

Dated the            day of            , 18 .

Yours &c.,

C. D. (*mortgagee*).

PRECE-  
DENT 62.

NOTICE OF  
INTENTION  
TO EXER-  
CISE POWER  
OF SALE.



## APPENDIX.

### TABLE OF STAMP DUTIES. (a)

AGREEMENT accompanied with a deposit of title deeds for making a mortgage .	{	The same duty as on a mortgage for the same amount.
---	---	---

AGREEMENT for a LEASE for any term not exceeding 35 years . . .	{	The same duty as if it were an actual lease.
---	---	--

A lease made subsequently, in conformity with such Agreement duly stamped, to be charged with the duty of sixpence only.

AGREEMENT, or MEMORANDUM of	£ s. d.
AGREEMENT, under hand only . . .	0 0 6

The duty of sixpence upon an agreement may be denoted by an adhesive stamp, to be cancelled at the time of execution.

ANNUITY—Conveyance in consideration of	{	The ad valorem duty as on a conveyance in respect of the total amount of the annuity payable during the period of 20 years.
--	---	---

(a) These duties are payable under the last Stamp Act, 33 & 34 Vict. c. 97. This Table is only intended to specify the stamp duties payable on assurances and instruments which daily engage the attention of the practitioner. Therefore neither exemptions nor special provisions are stated.

ANNUITY—*continued.*

Purchase of . . . . .	{ The same duty as on a conveyance on sale.
Creation of, by way of security. . . . .	{ The same duty as a mortgage for securing the amount to be so repaid.

APPOINTMENT of new trustee, or in execution of a power of any property, or of any use, share, or interest, in any property by any instrument, not being a will . . . . .	£ s. d. 0 10 0
--	-------------------

ATTESTED COPY. . . . .	0 1 0
------------------------	-------

BILL of SALE—	
Absolute. . . . .	{ The same duty as on a conveyance on sale.
By way of security . . . . .	{ The same duty as on a mortgage.

BOND for securing the payment of money or transfer of stock . . . . .	{ The same duty as on a mortgage.
---	-----------------------------------

In relation to any security upon the original creation and sale thereof . . . . .	{ The same duty as on a conveyance.
---	-------------------------------------

Of any kind whatsoever—

- (1.) Being the only or principal security for any annuity (*except upon the original creation thereof by way of sale or security*), or of any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument nor rent reserved by a lease.

For a definite and certain period so that the total amount to be ultimately payable can be ascertained. . . . .	{ The same ad valorem duty as a bond for such total amount.
For the term of life or any other indefinite period.	

For every 5 <i>l.</i> , and also for any fractional part of 5 <i>l.</i> , of the annuity or sum periodically payable . . . . .	0 2 6
--	-------



**BOND—continued.**

(2.) Being a collateral, or additional, or substituted security for any of the above-mentioned purposes, where the principal or primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained.

The same ad valorem duty as a bond of the same kind for such total amount.

£ s. d.

In any other case:

For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable .

0 0 6

Of any kind whatsoever not specifically charged with any duty.

Where the amount limited to be recoverable does not exceed 300*l.*

The same ad valorem duty as a bond for the amount limited.

In any other case . . . . .

0 10 0

**CONDITIONAL SURRENDER** of any copyhold or customary estate by way of mortgage . . . . .

The same duty as on a mortgage.

**CONVEYANCE on SALE,**

Where the amount or value of the consideration for the sale does not exceed 5*l.* . . . . .

. 0 0 6

Exceeds 5*l.* and does not exceed 10*l.* . . . . .

. 0 1 0

„ 10*l.* „ 15*l.* . . . . .

. 0 1 6

„ 15*l.* „ 20*l.* . . . . .

. 0 2 0

„ 20*l.* „ 25*l.* . . . . .

. 0 2 6

„ 25*l.* „ 50*l.* . . . . .

. 0 5 0

„ 50*l.* „ 75*l.* . . . . .

. 0 7 6

„ 75*l.* „ 100*l.* . . . . .

. 0 10 0

„ 100*l.* „ 125*l.* . . . . .

. 0 12 6

„ 125*l.* „ 150*l.* . . . . .

. 0 15 0

„ 150*l.* „ 175*l.* . . . . .

. 0 17 6

„ 175*l.* „ 200*l.* . . . . .

. 1 0 0

„ 200*l.* „ 225*l.* . . . . .

. 1 2 6

„ 225*l.* „ 250*l.* . . . . .

. 1 5 0

„ 250*l.* „ 275*l.* . . . . .

. 1 7 6

„ 275*l.* „ 300*l.* . . . . .

. 1 10 0

„ 300*l.* . . . . .

<b>CONVEYANCE on SALE—continued.</b>		<b>£ s. d.</b>
For every 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> , of such amount or value . . . . .		0 5 0
<b>COPYHOLDS—</b>		
Upon sale . . . . .	{ The same duty as on conveyance of freeholds.	
Upon mortgage . . . . .	{ The same duty as on mortgage of freeholds.	
Upon lease . . . . .	{ The same duty as on lease of freeholds.	
Upon any other occasion :		
Surrender out of Court, or memorandum thereof,		
And copy of Court-roll of any surrender made in Court . . . . .		0 10 0
<b>COVENANT for securing payment of money or transfer of stock . . . . .</b>		
{ The same duty as on a mortgage.		
In relation to any annuity upon the original creation and sale thereof . . . . .	{ The same duty as on a conveyance on sale.	
In relation to any annuity ( <i>except upon the original creation and sale thereof</i> ) or to other periodical payments . . . . .	{ The same duty as on a bond.	
<b>DEED STAMP . . . . .</b>		0 10 0
<b>DUPLICATE or COUNTERPART of any instrument chargeable with any duty.</b>		
Where such duty does not amount to 5 <i>s.</i> . . . . .		{ The same duty as the original instrument.
In any other case . . . . .		0 5 0

**EXCHANGE—Instruments effecting.**

Where any consideration exceeding in amount 100*l.* is paid for equality, the principal or only instrument is to be charged with the same *ad valorem* duty as a conveyance on sale, and where there are several instruments the principal instrument is to be ascertained, and the other instruments are to be

**EXCHANGE—continued.**

£ s. d.

charged with such other duty as they  
may be liable to, but such duty is not  
to exceed the ad valorem duty payable  
in respect of the principal instrument.

In any other case. . . . . 0 10 0

**FURTHER CHARGE.**

{ The same duty  
as on a mort-  
gage for the  
additional  
amount.

**LEASE—**

(1.) For any definite term less than a year :

(a.) Of any dwelling-house or tenement  
at a rent not exceeding the rate of  
10*l.* per annum . . . . .

0 0 1

(b.) Of any furnished dwelling-house or  
apartments where the rent for such  
term exceeds 25*l.* . . . . .

0 2 6

(c.) Of any lands or tenements except as  
aforesaid.

{ The same duty  
as a lease for  
a year at the  
rent reserved  
for the defi-  
nite term.

(2.) For any other definite term or for any  
indefinite term :

Of any lands or tenements—

Where the consideration consists  
of any money, stock, or security,

In respect of such consideration . .

{ The same duty  
as a convey-  
ance on a  
sale for the  
same consid-  
eration.

Where the consideration is any  
rent,

In respect of such consideration :

If the rent, whether reserved as  
yearly rent or otherwise, is at  
a rate or average rate :

LEASE—*continued.*

		If the term is definite, and does not exceed 35 years, or is indefinite.	If the term being indefinite exceeds 35 years, but does not exceed 100 years.	If the term being definite exceeds 100 years.
		£ s. d.	£ s. d.	£ s. d.
Not exceeding 5 <i>l.</i> per annum		0 0 6	0 3 0	0 6 0
Exceeding—				
5 <i>l.</i> and not exceeding	10 <i>l.</i>	0 1 0	0 6 0	0 12 0
10 <i>l.</i>	" "	0 1 6	0 9 0	0 18 0
15 <i>l.</i>	" "	0 2 0	0 12 0	1 4 0
20 <i>l.</i>	" "	0 2 6	0 15 0	1 10 0
25 <i>l.</i>	" "	0 5 0	1 10 0	3 0 0
50 <i>l.</i>	" "	0 7 6	2 5 0	4 10 0
75 <i>l.</i>	" "	0 10 0	3 0 0	6 0 0
100 <i>l.</i>				
For every full sum of 50 <i>l.</i> , and also for any fractional part of 50 <i>l.</i> thereof		0 5 0	1 10 0	3 0 0
Of any other kind not before described				0 10 0
No lease for life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for an absolute term exceeding 21 years, granted by an ecclesiastical corporation, aggregate or sole, is to be charged with any higher duty than thirty-five shillings.				

## MEMORIAL on REGISTRY of DEED—

Where the instrument is chargeable with any duty not amounting to	The same duty as the registered instrument.
2 <i>s.</i> 6 <i>d.</i>	
In any other case	0 2 6

## MORTGAGE—

(1.) Being the only or principal security for—

The payment of money not exceeding 25 <i>l.</i>	0 0 8
---	-------

**MORTGAGE—continued.**

		£	s.	d.
Exceeding 25 <i>l.</i> and not exceeding 50 <i>l.</i>		0	1	3
„ 50 <i>l.</i>	100 <i>l.</i>	0	2	6
„ 100 <i>l.</i>	150 <i>l.</i>	0	3	9
„ 150 <i>l.</i>	200 <i>l.</i>	0	5	0
„ 200 <i>l.</i>	250 <i>l.</i>	0	6	3
„ 250 <i>l.</i>	300 <i>l.</i>	0	7	6
„ 300 <i>l.</i>				

For every 100*l.*, and also for any fractional part of 100*l.*, of such amount . . .

0 2 6

- (2.) Being a collateral security, or by way of further assurance where the principal security is duly stamped :

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured . . .

0 0 6

**PARTITION—Instruments effecting,**

Where any consideration exceeding in amount 100*l.* is paid for equality, the principal or only instrument is to be charged with the same ad valorem duty as a conveyance on sale; and where there are several instruments, the principal instrument is to be ascertained, and the other instruments are to be charged with such other duty as they may be liable to, but such duty is not to exceed the ad valorem duty payable in respect of the principal instrument.

In any other case . . . 0 10 0

**POWER OF ATTORNEY.** . . . 0 10 0

**PRODUCTION OF DEEDS—**

Separate deed of covenant where the ad valorem duty in respect of the consideration-money does not exceed 10*s.* . . . { A duty equal to the amount of such ad valorem duty.

In any other case . . . 0 10 0

**RE-CONVEYANCE—**

£ s. d.

For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount of the money secured . . . 0 0 6

**RELEASE** of any property, or any right or interest therein not on sale or mortgage . 0 10 0

**REVOCATION** of any use or trust of any property by deed or writing not a will . 0 10 0

**SETTLEMENT—**

Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged on lands or hereditaments or not, or to be laid out in the purchase of lands or hereditaments or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled:

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount or value of the property. 0 5 0

**STATUTORY DECLARATION**, made under the provisions of 5 & 6 Will. 4, c. 62. 0 2 6

**SURRENDER—**

Of copyholds. *See* COPYHOLDS.

Of any other kind whatsoever not chargeable with duty as a conveyance on sale or mortgage . . . 0 10 0

**TRANSFER OF MORTGAGE—**

For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred . . . 0 0 6

TRANSFER OF MORTGAGE—*continued.*

And also where any further money is added to the money already secured.	{	The same duty as a principal security for such further money.
--	---	---

## WARRANT OF ATTORNEY—

To confess and enter up judgment as security for the payment of money or transfer of stock . . . . .	{	The same duty as on a mortgage.
--	---	------------------------------------

Of any other kind . . . . .	£ s. d. 0 10 0
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